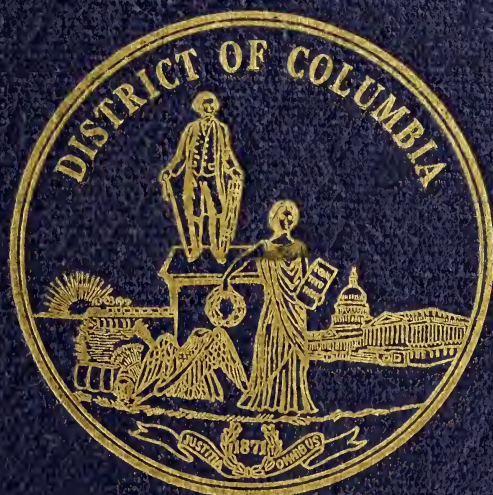


# DISTRICT OF COLUMBIA CODE

1940 EDITION



PART V—GENERAL STATUTES  
TABLES AND CUMULATIVE INDEX







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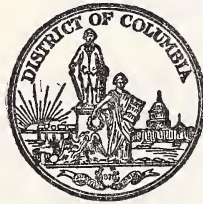
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# DISTRICT OF COLUMBIA CODE

1940 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,  
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT  
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF  
COLUMBIA BY REASON OF BEING GENERAL AND PER-  
MANENT LAWS OF THE UNITED STATES),  
IN FORCE ON JANUARY 3, 1941



---

VOLUME TWO

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Part V.—General Statutes  
Tables and Cumulative Index

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1941



For Sale by the  
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## CONTENTS

	Page
PREFACE .....	VII
TABLE OF TITLE AND CHAPTER HEADINGS .....	IX
PART V, GENERAL STATUTES .....	711
PARALLEL REFERENCE TABLES .....	1285
TABLES OF CASES .....	1339
COMBINED GENERAL INDEX .....	1381





# COMMITTEES ON REVISION OF THE LAWS OF THE HOUSE OF REPRESENTATIVES

UNDER WHOSE DIRECTION THIS  
EDITION HAS BEEN PREPARED

---

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## PREFACE

This is the second edition of the Code of Laws of the District of Columbia prepared and published pursuant to the Act of May 29, 1928 (45 Stat. 1007), as amended by the Act of March 2, 1929 (45 Stat. 1541). This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 3, 1941, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code is prima facie evidence of existing law and the Committee has not been authorized to make any substantive changes.

Many new features and improvements have been incorporated in this edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia.

An entirely new arrangement of subject matter has been adopted which presents all the procedural statutes in Volume One and the general statutes, in modern alphabetical arrangement, in Volume Two. Both of these volumes are of standard legal text book size and should be more convenient than the previous edition. A complete index to the statutes contained in Volume One will be found at the back of that volume and a cumulative index will be found at the back of Volume Two, together with complete reference tables. In addition, the 1929 edition citation is indicated in parentheses next to the section number of each section in this edition.

A modern method of numbering the sections has been adopted. The number before the - indicates the title; the last two numbers indicate the section; and the middle number or numbers indicates the chapter. No chapter in any title has more than 60 sections. An example: Section 11-1208 would be found as Section 8 of chapter 12 in Title 11. Section 1-240 would be Title 1, chapter 2, section 40.

Provision has been made so that future annual supplements shall be in the form of pocket parts rather than separate volumes.

This is the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes will be kept current in the future annual supplements.

The actual work of preparing copy was done by the Bobbs-Merrill Company of Indianapolis, under the supervision of the Committee on Revisions of the Laws of the House of Representatives. The Committee acknowledges especially the valuable assistance rendered by R. V. Sipe and Robert F. Klepinger representing the Bobbs-Merrill Co., and Charles J. Zinn, member of the District of Columbia and New York bars, representing the Committee. Acknowledgment is also made to Walter H. McClenon, of the Legislative Reference Service of the Library of Congress; and to the numerous officials of the District and Federal governments and the members of the bench and bar of the District who responded to the Committee's questionnaire.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.

EUGENE J. KEOGH,

*Chairman, Committee on Revision of the Laws.*

WASHINGTON, D. C., June 30, 1941.





# TABLE OF TITLES AND CHAPTER HEADINGS

## PART 1—GOVERNMENT OF DISTRICT (JUDICIARY EXCEPTED)

### TITLE 1.—ADMINISTRATION

Chapter	Sections
1. Creation of District—General Provisions .....	1-101—1-108
2. Commissioners and Other Officers .....	1-201—1-240
3. Officers and Employees Generally .....	1-301—1-317
4. Commissioner of Deeds .....	1-401, 1-402
5. Notaries Public .....	1-501—1-516
6. Surveyor .....	1-601—1-629
7. Inspection — Regulating Provisions .....	1-701—1-731
8. Contracts .....	1-801—1-819
9. Claims against District .....	1-901—1-905

### TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

1. Healing Arts Practice Act .....	2-101—2-140
2. Anatomical Board .....	2-201—2-209
3. Dentists .....	2-301—2-331
4. Nurses .....	2-401—2-411
5. Optometrists .....	2-501—2-522
6. Pharmacy .....	2-601—2-617
7. Podiatry .....	2-701—2-719
8. Veterinarians .....	2-801—2-812
9. Accountants .....	2-901—2-909
10. Architects .....	2-1001—2-1031
11. Barbers .....	2-1101—2-1118
12. Boxing Commission .....	2-1201—2-1209
13. Cosmetologists .....	2-1301—2-1328
14. Plumbers .....	2-1401—2-1408
15. Steam and Other Operating Engineers .....	2-1501—2-1507
16. Washington National Airport .....	2-1601—2-1603

### TITLE 3.—BOARD OF PUBLIC WELFARE

1. Board of Public Welfare .....	3-101—3-125
----------------------------------	-------------

### TITLE 4.—POLICE AND FIRE DEPARTMENTS

1. Metropolitan Police .....	4-101—4-181
2. United States Park Police .....	4-201—4-208
3. White House Police .....	4-301—4-306
4. Fire Department .....	4-401—4-412
5. Police and Firemen's Relief Fund .....	4-501—4-516
6. Trial Boards .....	4-601—4-604
7. Awards for Meritorious Service .....	4-701—4-704
8. Salaries .....	4-801, 4-802
9. Miscellaneous Provisions .....	4-901

### TITLE 5.—BUILDING LINES AND REGULATIONS

1. Alley Dwellings .....	5-101—5-116
2. Building Lines .....	5-201—5-206

### Chapter

3. Fire Escapes and Safety Provision .....	5-301—5-317
4. Zoning and Height of Buildings .....	5-401—5-430
5. Unsafe Structures .....	5-501—5-505
6. Insanitary Buildings .....	5-601—5-615

### TITLE 6.—HEALTH AND SAFETY

1. Health Department — Organization .....	6-101—6-119
2. Blindness in Infants — Prevention .....	6-201—6-204
3. Vital Statistics .....	6-301—6-304
4. Drainage of Lots .....	6-401—6-404
5. Garbage .....	6-501—6-511
6. Manufacture, Renovation, and Sale of Mattresses .....	6-601—6-608
7. Privies .....	6-701—6-704
8. Smoke Prevention .....	6-801—6-804
9. Weeds and Plant Diseases .....	6-901—6-905

### TITLE 7.—HIGHWAYS, STREETS, BRIDGES

1. Highway Plans .....	7-101—7-131
2. Land for Streets .....	7-201—7-221
3. Alleys and Minor Streets .....	7-301—7-333
4. Closing Streets, Alleys, or Highways .....	7-401—7-410
5. Bridges, Viaducts, and Subways .....	7-501—7-524
6. Repair and Construction .....	7-601—7-634
7. Street Lighting .....	7-701—7-710
8. Removal of Snow and Ice .....	7-801—7-806
9. Rental of Vaults under Sidewalks .....	7-901
10. Real Estate Sale or Rent Signs .....	7-1001
11. Barbed Wire Fences .....	7-1101—7-1105
12. Miscellaneous .....	7-1201—7-1234

### TITLE 8.—PARKS AND PLAYGROUNDS

1. Parks and Playgrounds .....	8-101—8-171
--------------------------------	-------------

### TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

1. Regulating Provisions .....	9-101—9-117
2. Construction of Public Buildings .....	9-201—9-218
3. Sale of Public Lands .....	9-301—9-306

### TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

1. Weights, Measures, and Markets .....	10-101—10-138
---	---------------

**PART II.—CIVIL PROCEDURE**

<b>TITLE 11.—JUDICIARY AND JURISDICTION</b>	
Chapter	Sections
1. General Provisions.....	11-101—11-102
2. United States Court of Appeals for the District of Columbia .....	11-201—11-211
3. District Court of the United States for the District of Columbia .....	11-301—11-330
4. Clerk of District Court.....	11-401—11-403
5. Probate Court.....	11-501—11-520
6. Police Court.....	11-601—11-627
7. Municipal Court.....	11-701—11-749
8. Small Claims and Conciliation Branch of Municipal Court.....	11-801—11-820
9. Juvenile Court.....	11-901—11-942
10. District Attorney.....	11-1001—11-1002
11. Marshal .....	11-1101—11-1105
12. Coroner .....	11-1201—11-1208
13. Attorneys.....	11-1301—11-1304
14. Juries and Jury Commissioners.....	11-1401—11-1423
15. Fees and Costs.....	11-1501—11-1519

<b>TITLE 12.—RIGHT TO REMEDY—CONDITIONS AFFECTING</b>	
1. Abatement and Revivor.....	12-101—12-116
2. Limitation of Actions.....	12-201—12-208
3. Statute of Frauds.....	12-301—12-306
4. Fraudulent Conveyances .....	12-401—12-403

<b>TITLE 13.—PROCESS, PLEADINGS AND PARTIES</b>	
1. Process .....	13-101—13-113
2. Pleading.....	13-201—13-222
3. Amendment of and Mistakes in Pleadings and Proceedings..	13-301—13-320
4. Parties .....	13-401

<b>TITLE 14.—PROOF</b>	
1. Evidence in General.....	14-101—14-104
2. Depositions .....	14-201—14-204

Chapter	Sections
3. Competency of Witnesses.....	14-301—14-309
4. Documentary Evidence.....	14-401—14-406
5. Absence for Seven Years.....	14-501—14-502

<b>TITLE 15.—JUDGMENTS AND EXECUTION OF JUDICIAL POWERS</b>	
1. Judgments and Decrees.....	15-101—15-111
2. Executions.....	15-201—15-218
3. Proceedings in Aid of Execution .....	15-301—15-313
4. Exemptions.....	15-401—15-402

<b>TITLE 16.—SPECIAL REMEDIES AND PROCEEDINGS</b>	
1. Account .....	16-101—16-106
2. Adoption .....	16-201—16-207
3. Attachment and Garnishment.....	16-301—16-335
4. Divorce and Separation.....	16-401—16-422
5. Ejectment .....	16-501—16-534
6. Eminent Domain .....	16-601—16-644
7. Gaming Transactions .....	16-701—16-707
8. Habeas Corpus.....	16-801—16-808
9. Joint Contracts .....	16-901—16-906
10. Mandamus.....	16-1001—16-1010
11. Name, Change of.....	16-1101—16-1103
12. Negligence Causing Death..	16-1201—16-1203
13. Partition and Assignment of Dower.....	16-1301—16-1306
14. Payment of Money into Court..	16-1401—16-1403
15. Quieting Title Obtained by Adverse Possession.....	16-1501
16. Quo Warranto .....	16-1601—16-1611
17. Reference of Questions of Law and Fact.....	16-1701—16-1719
18. Replevin.....	16-1801—16-1814
19. Set Off.....	16-1901—16-1909
20. Sureties .....	16-2001—16-2005

<b>TITLE 17.—REVIEW</b>	
1. Jurisdiction and Method.....	17-101—17-105

**PART III.—PROBATE LAW AND PROCEDURE**

<b>TITLE 18.—DECEDENT'S ESTATES AND THEIR DISTRIBUTION</b>	
1. Law of Descents.....	18-101—18-111
2. Dower and Curtesy Rights.....	18-201—18-215
3. Assets of Estate.....	18-301—18-305
4. Inventory of Assets.....	18-401—18-408
5. Claims of Creditors.....	18-501—18-530
6. Sale of Assets.....	18-601—18-612
7. Distribution of Surplus—Beneficiaries .....	18-701—18-723

<b>TITLE 19.—WILLS</b>	
1. Wills in General.....	19-101—19-111
2. Devises by Will.....	19-201—19-205

3. Probate of Wills.....	19-301—19-313
4. Register of Wills.....	19-401—19-411

<b>TITLE 20.—ADMINISTRATOR'S EXECUTORS AND COLLECTORS</b>	
1. General Provisions.....	20-101—20-119
2. Administrators.....	20-201—20-219
3. Executors.....	20-301—20-312
4. Collectors.....	20-401—20-405
5. Suits .....	20-501—20-506
6. Accounts.....	20-601—20-610
7. Estates of Absentees and Absconders .....	20-701—20-715



**TITLE 21.—GUARDIAN AND WARD, AND INSANE PERSONS**

Chapter	Sections
1. Infants and Other Incompetents .....	21-101—21-130

**Chapter**

2. Property of Infants and Persons Non Compos Mentis .....	Sections
21-201—21-213	
3. Insane Persons, Inquests.....	21-301—21-333
4. Drunkards and Drug Addicts..	21-401

**PART IV.—CRIMINAL LAW AND PROCEDURE****TITLE 22.—CRIMINAL OFFENSES**

1. General Provisions.....	22-101—22-109
2. Abortion.....	22-201
3. Adultery.....	22-301
4. Arson.....	22-401—22-404
5. Assault—Mayhem—Threat of Bodily Harm.....	22-501—22-507
6. Bigamy.....	22-601
7. Bribery—Obstructing Justice..	22-701—22-704
8. Cruelty to Animals.....	22-801—22-814
9. Domestic Relations.....	22-901—22-906
10. Fornication.....	22-1001
11. Disorderly Conduct.....	22-1101—22-1120
12. Embezzlement.....	22-1201—22-1211
13. False Pretenses—False Personation.....	22-1301—22-1308
14. Forgery—Frauds.....	22-1401—22-1414
15. Gambling.....	22-1501—22-1512
16. Game and Fish Laws.....	22-1601—22-1627
17. Harbor Regulations.....	22-1701—22-1703
18. Housebreaking.....	22-1801
19. Incest.....	22-1901
20. Indecent Publications.....	22-2001
21. Kidnaping.....	22-2101
22. Larceny—Receiving Stolen Goods.....	22-2201—22-2208
23. Libel—Blackmail.....	22-2301—22-2305
24. Murder—Manslaughter.....	22-2401—22-2405

25. Perjury.....	22-2501
26. Prison Breach—Misprisions..	22-2601—22-2602
27. Prostitution — Pandering — Houses of Prostitution....	22-2701—22-2719
28. Rape.....	22-2801
29. Robbery.....	22-2901—22-2903
30. Seduction.....	22-3001—22-3002
31. Trespass—Injuries to Property.....	22-3103—22-3122
32. Weapons.....	22-3201—22-3216
33. Vagrancy.....	22-3301
34. Miscellaneous.....	22-3401—22-3416

**TITLE 23.—CRIMINAL PROCEDURE**

1. General Provisions.....	23-101—23-114
2. Indictments.....	23-201—23-205
3. Search Warrants.....	23-301—23-305
4. Fugitives from Justice.....	23-401—23-410
5. Uniform Act on Fresh Pursuit..	23-501—23-504
6. Professional Bondsmen.....	23-601—23-612
7. Death Penalty.....	23-701—23-706

**TITLE 24.—PRISONERS AND THEIR TREATMENT**

1. Probation.....	24-101—24-105
2. Indeterminate Sentences and Paroles.....	24-201—24-209
3. Insane Criminals.....	24-301—24-303
4. Prisons and Prisoners.....	24-401—24-424

**THE FOLLOWING TITLES APPEAR IN VOLUME 2****PART V.—GENERAL STATUTES****TITLE 25.—ALCOHOLIC BEVERAGES**

Chapter	Sections
1. Alcoholic Beverage Control Act..	25-101—25-138

**TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS**

1. Banking Institutions in General.....	26-101—26-110
2. Joint Accounts—Adverse Claimants—Trust Accounts..	26-201—26-204
3. Trust, Loan, Mortgage, Safe Deposit and Title Corporations.....	26-301—26-336
4. Building Associations.....	26-401—26-416
5. Credit Unions.....	26-501—26-518
6. Money Lenders—Licenses.....	26-601—26-611

**TITLE 27.—CEMETERIES AND CREMATORIES**

1. Cemetery Associations—Regulatory Provisions.....	27-101—27-131
---	---------------

**TITLE 28.—COMMERCIAL TRANSACTIONS****NEGOTIABLE INSTRUMENTS—UNIFORM LAW**

Chapter	Sections
1. Form and Interpretation....	28-101—28-124
2. Consideration.....	28-201—28-206
3. Negotiation.....	28-301—28-321
4. Rights of Holder.....	28-401—28-410
5. Liabilities of Parties.....	28-501—28-510
6. Presentment for Payment....	28-601—28-619
7. Notice of Dishonor.....	28-701—28-730
8. Discharge of Negotiable Instruments.....	28-801—28-807
9. Bills of Exchange.....	28-901—28-959
10. Promissory Notes and Checks..	28-1001—28-1010

**SALES—UNIFORM ACT**

11. Formation of Contract.....	28-1101—28-1116
12. Transfer of Property as Between Seller and Buyer....	28-1201—28-1224

Chapter	Sections
13. Performance of Contract.....	28-1301—28-1311
14. Rights of Unpaid Seller against Goods.....	28-1401—28-1411
15. Actions for Breach of Con- tract .....	28-1501—28-1508
16. Interpretation of Uniform Sales Act.....	28-1601—28-1608
17. Bulk Sales Law.....	28-1701—28-1705
WAREHOUSE RECEIPTS—UNIFORM LAW	
18. Issuance of Warehouse Re- ceipts .....	28-1801—28-1807
19. Obligations and Rights of Warehousemen upon Their Rights .....	28-1901—28-1930
20. Negotiation and Transfer of Receipts .....	28-2001—28-2013
21. Criminal Offenses.....	28-2101—28-2106
22. Interpretation.....	28-2201—28-2205
23. Fiduciaries—Uniform Act....	28-2301—28-2314
24. Bonds and Undertakings....	28-2401—28-2407
25. Assignment of Choses in Action.....	28-2501—28-2504
26. Assignments for Benefit of Creditors.....	28-2601—28-2610
27. Interest and Usury.....	28-2701—28-2709
28. Computation of Time.....	28-2801—28-2803

## TITLE 29.—CORPORATIONS

1. General Provisions.....	29-101—29-105
2. Business Corporations.....	29-201—29-240
3. Boards of Trade.....	29-301—29-308
4. Institutions of Learning.....	29-401—29-419
5. Religious Societies.....	29-501—29-516
6. Charitable, Educational, and Religious Associations.....	29-601—29-606
7. Dissolution .....	29-701—29-729

## TITLE 30.—DOMESTIC RELATIONS

1. Marriage .....	30-101—30-117
2. Property Rights.....	30-201—30-216

## TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

1. Board of Education.....	31-101—31-120
2. Compulsory School Attend- ance and Work Permits....	31-201—31-213
3. Tuition of Nonresidents....	31-301—31-305
4. Free Textbooks .....	31-401—31-406
5. Vocational Rehabilitation of Residents of the District of Columbia.....	31-501—31-507
6. Teachers, School Officers and Other Employees in Gen- eral .....	31-601—31-631
7. Retirement of Public School Teachers .....	31-701—31-720
8. Use of School Buildings.....	31-801—31-809
9. Medical and Dental Col- leges.....	31-901—31-905
10. The Columbia Institution For the Deaf, Dumb, and Blind.....	31-1001—31-1024
11. Miscellaneous.....	31-1101—31-1116

TITLE 32.—ELEEMOSYNARY, CURATIVE, COR-  
RECTIONAL AND PENAL INSTITUTIONS AND  
AGENCIES

Chapter	Sections
1. Association for Works of Mercy .....	32-101—32-104
2. Washington Humane So- ciety .....	32-201—32-211
3. Hospitals and Asylums— General Provisions.....	32-301—32-320
4. Saint Elizabeths Hospital....	32-401—32-407
5. Industrial Home School....	32-501—32-504
6. District Training School....	32-601—32-629
7. Home Care for Dependent Children.....	32-701—32-710
8. National Training School for Boys .....	32-801—32-822
9. National Training School for Girls .....	32-901—32-913
10. Miscellaneous .....	32-1001—32-1009

## TITLE 33.—FOOD AND DRUGS

1. Adulteration.....	33-101—33-110
2. Candy.....	33-201—33-203
3. Milk, Cream and Ice Cream....	33-301—33-329
4. Uniform Narcotic Drug Act....	33-401—33-427

## TITLE 34.—HOTELS AND LODGINGHOUSES

1. Rights and Liabilities.....	34-101—34-103
--------------------------------	---------------

## TITLE 35.—INSURANCE

1. Insurance Department—Gen- eral Publication.....	35-101—35-108
2. Provisions Applicable to More Than One Kind of Insur- ance .....	35-201—35-205
3. Life Insurance Act—Defini- tions .....	35-301—35-302
4. Department of Insurance with Respect to Life Com- panies.....	35-401—35-432
5. Domestic Life Companies....	35-501—35-540
6. Foreign and Alien Life Com- panies.....	35-601—35-602
7. Provisions Relating to All Life Insurance Compa- nies .....	35-701—35-721
8. Life Insurance Act—Penal- ties—Constitutionality....	35-801—35-803
9. Fraternal Benefit Associa- tions .....	35-901—35-928
10. Industrial Life Insurance....	35-1001—35-1005
11. Marine Insurance.....	35-1101—35-1133
12. Insurance Agents Other Than Life.....	35-1201, 35-1202
13. Fire, Casualty and Marine Insurance.....	35-1301—35-1350

## TITLE 36.—LABOR

1. Apprentices.....	36-101—36-111
2. Child Labor and Work Per- mits.....	36-201—36-227
3. Employment of Women.....	36-301—36-311
4. Minimum Wage Law.....	36-401—36-422
5. Workmen's Compensation....	36-501, 36-502



## TITLE 37.—LIBRARIES

Chapter	Sections
1. Public Libraries.....	37-101—37-109

## TITLE 38.—LIENS

1. Mechanics, Materialmen and Contractors.....	38-101—38-126
2. Garage Keepers and Liverymen.....	38-201—38-203
3. Hospitals.....	38-301—38-305

## TITLE 39.—MILITARY

1. Composition, Organization and Control.....	39-101—39-112
2. Commissioned Officers.....	39-201—39-214
3. Noncommissioned Officers.....	39-301
4. Enlisted Personnel.....	39-401—39-405
5. Armament, Equipment and Supplies.....	39-501—39-517
6. Active Military Duty.....	39-601—39-608
7. Courts Martial.....	39-701—39-709
8. Pay and Allowances.....	39-801—39-806
9. Miscellaneous Provisions.....	39-901—39-906

## TITLE 40.—MOTOR VEHICLES

1. Registration of Motor Vehicles.....	40-101—40-105
2. Inspection.....	40-201—40-207
3. Operators' Permits.....	40-301—40-304
4. Owners' Financial Responsibility Act.....	40-401—40-416
5. Publicly Owned Vehicles.....	40-501—40-504
6. Regulation of Traffic.....	40-601—40-617
7. Liens on Motor Vehicles or Trailers.....	40-701—40-715

## TITLE 41.—PARTNERSHIPS

1. Limited Partnerships.....	41-101—41-131
2. Dissolution and Payment of Debts.....	41-201—41-204

## TITLE 42.—PERSONAL PROPERTY

1. Recordation of Instruments...	42-101—42-103
----------------------------------	---------------

## TITLE 43.—PUBLIC UTILITIES

1. Definition of Terms and Application of Law.....	43-101—43-123
2. Creation of Public Utilities Commission — Members — Counsel—Employees.....	43-201—43-209
3. Service, Valuation, Accounts.....	43-301—43-330
4. Rates, Examinations, Investigations and Hearings.....	43-401—43-422
5. Sale and Merger of Utilities.....	43-501—43-503
6. Gas and Electric Corporations.....	43-601—43-606
7. Orders and Court Proceedings.....	43-701—43-713
8. Issuance of Securities.....	43-801—43-808
9. Penal Provisions.....	43-901—43-913
10. General Provisions.....	43-1001—43-1007
11. Electric Light and Power Companies—Special Acts.....	43-1101—43-1109

## Chapter

Chapter	Sections
12. Gas Companies — Special Acts.....	43-1201—43-1207
13. Private Conduits.....	43-1301—43-1304
14. Telegraph and Telephone Companies.....	43-1401—43-1417
15. Water Supply, Assessments and Rates.....	43-1501—43-1538

## TITLE 44.—RAILROADS AND OTHER CARRIERS

1. Railroads.....	44-101—44-107
2. Street Railways and Bus Lines.....	44-201—44-215
3. Motor Carriers.....	44-301
4. Employers' Liability Act.....	44-401—44-405

## TITLE 45.—REAL PROPERTY

1. Conveyable Estates and Methods of Conveyance.....	45-101—45-106
2. Interpretation of Instruments.....	45-201—45-205
3. Forms—Covenants and Warranties.....	45-301—45-309
4. Acknowledgments.....	45-401—45-412
5. Effective Date and Recording of Deeds.....	45-501—45-506
6. Mortgages and Deeds of Trust.....	45-601—45-620
7. Recorder of Deeds.....	45-701—45-710
8. Estates in Land.....	45-801—45-823
9. Landlord and Tenant.....	45-901—45-934
10. Powers.....	45-1001—45-1019
11. Sale of Contingent and Limited Interests.....	45-1101—45-1104
12. Uses and Trusts.....	45-1201—45-1203
13. Waste.....	45-1301—45-1304
14. Real Estate and Business Brokers License Act.....	45-1401—45-1418
15. Ownership by Aliens.....	45-1501—45-1505

## TITLE 46.—SOCIAL SECURITY

1. Care of Blind.....	46-101—46-116
2. Old Age Assistance.....	46-201—46-215
3. Unemployment Compensation.....	46-301—46-324

## TITLE 47.—TAXATION AND FISCAL AFFAIRS

1. General Provisions.....	47-101—47-134
2. Budget Estimates.....	47-201—47-212
3. Collection and Disbursement of Taxes.....	47-301—47-311
4. Designation of Property for Assessment and Taxation.....	47-401—47-409
5. Fixation of Rates.....	47-501—47-503
6. Tax Assessor.....	47-601—47-606
7. Assessment of Real Property.....	47-701—47-723
8. Exemptions from Taxation—Real Property.....	47-801—47-830
9. Family Dwelling.....	47-901—47-906
10. Real Property Tax Sales.....	47-1001—47-1019
11. Special Assessments.....	47-1101—47-1107
12. Taxation of Personal Property.....	47-1201—47-1214
13. Enforcement of Personal Property by Distraint or levy.....	47-1301—47-1305

## Chapter

14. Enforcement of Personal Property Taxes by Ac- quisition of Lien-----	Sections 47-1401—47-1412
15. Income Tax-----	47-1501—47-1543
16. Inheritance and Estate Taxes-----	47-1601—47-1629
17. Excise and License Taxes on Particular Businesses-----	47-1701—47-1709
18. Insurance Companies-----	47-1801—47-1808
19. Motor Fuel Tax-----	47-1901—47-1919
20. Dog Tax-----	47-2001—47-2008
21. Private Employment Agen- cies-----	47-2101—47-2111
22. Public Auctions-----	47-2201—47-2208
23. License Law of 1932-----	47-2301—47-2350
24. Board of Tax Appeals-----	47-2401—47-2412
25. Miscellaneous Provisions----	47-2501—47-2504

## TITLE 48.—TRADE-MARKS AND TRADE NAMES

## Chapter

1. Registration of Mineral Water Bottles-----	Sections 48-101—48-102
2. Registration of Milk Contain- ers-----	48-201—48-211
3. Registration of Containers for Beverage Composed Princi- pally of Milk-----	48-301—48-307
4. Labels for Designation of Products or Organizations--	48-401—48-403

TITLE 49.—COMPILATION AND CONSTRUCTION  
OF CODE

1. General Provisions-----	49-101—49-111
2. Rules of Construction-----	49-201—49-207
3. Laws Remaining in Force-----	49-301—49-304







# PART V

## GENERAL STATUTES

### TITLE 25.—ALCOHOLIC BEVERAGES

- | Chap.  | Sec.   | Sec.   |
|--|--|--|
| 1. Alcoholic Beverage Control Act-----           | 25-101   |  |
| <b>Chapter 1.—ALCOHOLIC BEVERAGE CONTROL ACT</b> |  |  |
|  | Sec.   |  |
| 25-101.  | Partial repeal of National Prohibition Act.  | 25-127.  |
| 25-102.  | Citation—Application.  | 25-128.  |
| 25-103.  | Definitions.   | 25-129.  |
| 25-104.  | Alcoholic Beverage Control Board—Appointment—Term—Salary—Employees.  | 25-130.  |
| 25-105.  | Interest of board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.  | 25-131.  |
| 25-106.  | Jurisdiction of board over licenses—Appeal from revocation—Duties.   | 25-132.  |
| 25-107.  | Powers of Commissioners—Rules and regulations—Licenses.  | 25-133.  |
| 25-108.  | Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.  | 25-134.  |
| 25-109.  | Sale without license prohibited—Exceptions.  | 25-135.  |
| 25-110.  | Licenses—Applications for—To whom granted—Records.   | 25-136.  |
| 25-111.  | License classifications—Fees.  | 25-137.  |
| 25-112.  | Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.   | 25-138.  |
| 25-113.  | Holding of license of more than one class forbidden—Definition of "licensee."  |  |
| 25-114.  | Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.  |  |
| 25-115.  | Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from government warehouses—Bond—Penalty. |  |
| 25-116.  | Issuing licenses in certain districts restricted.  |  |
| 25-117.  | Transfer of license—Fee—Conditions imposed.  |  |
| 25-118.  | Revocation of license—Causes—Hearing—Discretionary closing for one year.   |  |
| 25-119.  | Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.   |  |
| 25-120.  | Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.   |  |
| 25-121.  | Sale to minors or intoxicated persons—Liability of licensee.   |  |
| 25-122.  | License forfeited on licensee becoming bail.   |  |
| 25-123.  | Monthly reports of sales and purchases.  |  |
| 25-124.  | Beverage tax—Stamps—Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.   |  |
| 25-125.  | Sale, distribution, furnishing of beverages by convicted persons and minors.   |  |
| 25-126.  | Power of board to compel testimony—Witness fees—Perjury.   |  |
|  |  | § 25-101 [20: 1901]. Partial repeal of National Prohibition Act.   |
|  |  | The National Prohibition Act, as amended and supplemented, insofar as it affects the manufacture, sale, and possession in the District of Columbia, and the transportation in, into, and from the District of Columbia, of alcoholic beverages, is hereby repealed, with the exception of title III, and section 4 of title II insofar as it affects denatured alcohol. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 1.) |
|  |  | COMPILER'S NOTE  |
|  |  | The act of August 27, 1935, 49 Stat. 872, ch. 740, repealed titles I and II of the National Prohibition Act, October 28, 1919 (41 Stat. 305), and all laws amendatory of, or supplementary thereto. Title III is also affected thereby.  |
|  |  | CROSS REFERENCE  |
|  |  | Previous violation or seizures under National Prohibition Act not affected, § 25-135.  |
|  |  | NOTES TO DECISIONS   |
|  |  | IN GENERAL   |
|  |  | This act did not repeal the Liquor Taxing Act of 1934. <i>Sims v. Rives</i> (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).   |
|  |  | § 25-102 [20: 1902]. Citation—Application.   |
|  |  | This chapter may be cited as the "District of Columbia Alcoholic Beverage Control Act." It shall apply only to the District of Columbia and shall not authorize the delivery of alcoholic beverages outside of the District of Columbia in violation of the law of the place of delivery. (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 2.)   |



## CROSS REFERENCE

Application and exemptions from act, §§ 25-108, 25-109, 25-115, 25-127, 25-137.

## § 25-103 [20: 1903]. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

(a) The word "alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(b) The word "spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including brandy, rum, whisky, cordials, and gin.

(c) The word "wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14 per centum or less of alcohol by volume, other than champagne.

(d) The word "beer" means any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor.

(e) The words "alcoholic beverage" or "beverage" include the four varieties of liquor above defined (alcohol, spirits, wine, and beer) and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties above defined is considered as belonging to that variety which has the higher percentage of alcohol, according to the order in which they are above defined, except as provided in subsection (c) hereof. The provisions of this section and of this chapter shall not apply to any liquid or solid containing less than one half of 1 per centum of alcohol by volume, nor shall anything contained in this chapter be construed as affecting the manufacture of apple cider or the sale thereof.

(f) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

(g) The word "club" means a corporation for the promotion of some common object (not including corporations organized for any commercial or business purpose, the object of which is money profit), owning, hiring, or leasing a building or space in a building of such extent and character as in the judgment of the board may be suitable and adequate for the reasonable and comfortable use and accommodations of its members and their guests, and including such space outside of the building and adjoining it as may be approved by the board, and provided with such suitable and adequate kitchen and dining-room space and equipment, implements, and facilities, and employing such a sufficient number of em-

ployees for cooking, preparing, and serving meals for its members and their guests, as shall satisfy the board that the sale of beverages intended is not more than an incident to and is not the prime source of revenue from such space; and the affairs and management of such corporation are conducted by a board of directors, executive committee, or similar body chosen by the members at least once each calendar year and no officer, agent, or employee of the club is paid directly or indirectly, or receives in the form of salary or other compensation, any profit from the disposition or sale of beverages to the club or to the members of the club or guests introduced by members beyond the amount of such salary as may be fixed and voted by the members, or by its directors, or other governing body.

(h) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(i) The word "District" shall mean the District of Columbia.

(j) The word "hotel" means a suitable building or other structure, approved by the board, including such suitable space outside of the building and adjoining it as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served and sleeping accommodations offered for pay to transient guests; in which thirty or more rooms are used for the sleeping accommodations of such transient guests, and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building or in connecting buildings, and such building or buildings, structure or structures being provided with such adequate kitchen and dining-room equipment and capacity and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the board that such dining room is intended for use primarily as a place for preparing, cooking, and serving meals and that the chief source of revenue to be derived from the operation of such dining room shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such dining room shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide dining room.

(k) The word "manufacture" shall include rectification.

(l) The word "meals" means the usual assortment of foods commonly ordered at various hours of the day; and such food and victuals as sandwiches and salads shall not be regarded as a "meal."

(m) The word "person" includes an individual, partnership, corporation, and association.

(n) The word "restaurant" means a suitable space in a suitable building, approved by the board, including such suitable space outside of the building and adjoining it as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and dining-room equipment and capacity, and having



employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

(o) The word "sell" or "sale" shall include offering for sale, keeping for sale, trafficking in, bartering, delivering for value, exchanging for goods, or in any way other than purely gratuitously, and every delivery of any alcoholic beverage made otherwise than by purely gratuitous title shall constitute a sale.

(p) The word "table" shall not include a counter, bar, or similar contrivance.

(q) The word "tavern" means a suitable space in a suitable building approved by the board, including such suitable space outside the building and adjoining it, as may be approved by the board, kept, used, maintained, advertised, or held out to the public to be a place where sandwiches or light lunches are prepared and served for consumption on the premises in such quantities as to satisfy the board that the sale of beer and light wines intended is no more than an incident to and not the prime source of revenue of such "tavern." (Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1.)

#### AMENDMENT

Act of 1934 was amended by act of 1935 to include "light wines" in section (q).

#### CROSS REFERENCES

"Licensee" defined, § 25-113.

"Manufacturer" defined, § 25-119.

"Wholesaler" defined, § 25-120.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

The act of March 3, 1893 (27 Stat. 563, ch. 204), regulating the sale of intoxicating liquors in the District of Columbia, applied to clubs organized for social and literary purposes and such clubs were required to obtain a license. *Army & Navy Club v. District of Columbia* (8 App. D. C. 544).

A barroom is a place in which intoxicating liquors are sold to be drunk on the premises. *Army & Navy Club v. District of Columbia* (8 App. D. C. 544).

#### § 25-104 [20:1904]. Alcoholic Beverage Control Board—Appointment—Term—Salary—Employees.

The Commissioners of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioners, to be called the "Alcoholic Beverage Control Board," each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board, one shall be appointed for two years, one for three years and one for four years, and thereafter all appointments shall be for the term of four years, except such appoint-

ments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioners shall designate one of the members of the Board to be chairman thereof. The salary of each of the members of the Board shall be five thousand dollars per annum. The Commissioners are authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The salaries of employees, other than members of the Board, shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13). The Commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4.)

#### STATUTORY REFERENCE

Federal Alcohol Administration Act of August 29, 1935, U. S. C., title 27, § 201 et seq.

#### § 25-105 [20:1905]. Interest of board member or employee in manufacture, transporting, or storing of alcoholic beverages forbidden.

No member or employee of the board, directly or indirectly, individually, or as a member of a partnership or association, or stockholder in a corporation shall have any interest whatsoever in dealing in, manufacturing, transporting, or storing alcoholic beverages, nor receive any commission or profit whatsoever from any person authorized by virtue of this chapter to manufacture or sell alcoholic beverages. No provision of this section, however, shall prevent any such member or such employee from purchasing, transporting, and keeping in his possession any alcoholic beverage for the personal use of himself or members of his family or guests. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 5.)

#### CROSS REFERENCE

Business interests forbidden, §§ 25-113, 25-115, 25-119, 25-120.

#### § 25-106 [20:1906]. Jurisdiction of board over licenses—Appeal from revocation—Duties.

The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than thirty days by the Board, the licensee may, within ten days after the order of revocation, or the order of suspension for a period of more than thirty days is entered, appeal in writing to the Commissioners to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the discretion of the Commissioners, and the Commissioners shall not be required to take evidence, either oral, written, or documentary. The decision of the Commissioners on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal, the license shall stand suspended unless the Commissioners shall otherwise order.



That the right and power be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations or associations, partnerships, executors, administrators, being owners thereof, receivers or other representatives of a court, to persons licensed under this chapter.

Said Board shall have such other authority and perform such other duties as the Commissioners may, by regulation, prescribe. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2.)

#### AMENDMENT

The 1935 amendment inserted provisions relating to suspension of licenses, and added the entire second paragraph.

#### CROSS REFERENCES

Causes for revocation or suspension of licenses, §§ 25-115, 25-118, 25-119, 25-120, 25-122.

Other provisions concerning rules and regulations, § 25-107 and notes.

Permits under Beverage License Law, § 25-131.

Refund of fees when license is refused, § 47-1018.

Rules and regulations in general, § 1-226 and notes.

Suspension or revocation of license for violation of the Uniform Narcotic Drug Act, § 33-418.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

#### § 25-107 [20: 1907]. Powers of Commissioners—Rules and regulations—Licenses.

The Commissioners are hereby authorized to prescribe such rules and regulations not inconsistent with this chapter as they may deem necessary to carry out the purposes thereof and to control and regulate the manufacture, sale, keeping for sale, offer for sale, solicitation of orders for sale, importation, exportation, and transportation of alcoholic beverages in the District of Columbia for the protection of the public health, comfort, safety, and morals.

The Commissioners shall have specific authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as they may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as they may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as they, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934, near or around schools, colleges, universities, churches, or public institutions, to prescribe the hours during which beverages may be sold and to forbid the sale on Sundays; but the commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on Sundays other than

light wines and beer, and any such sale is hereby prohibited. The powers and authorities expressly enumerated are to be construed as in addition to, and not by way of limitation of, the general powers herein granted. Different regulations may be prescribed for the different classes of licenses, for the different classes of beverages, and for different localities in or sections or portions of the District of Columbia.

Any regulations promulgated hereunder shall become effective five days after being published in any daily newspaper of general circulation in the District of Columbia. Such regulations may be altered or amended from time to time as the commissioners may deem desirable. The Commissioners shall also have authority in any time of public emergency, without previous notice or advertisement, to prohibit the sale of any or all beverages during the period of such emergency. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 7.)

#### CROSS REFERENCES

Other provisions for rules and regulations under this chapter, §§ 25-106, 25-112, 25-115, 25-138.

Penalties for violations of act or rules and regulations, §§ 25-118, 25-132.

Rules and regulations generally, § 1-226 and notes.

#### NOTES TO DECISIONS

##### DOUBLE JEOPARDY

Convictions for violations of this act and the Liquor Taxing Act of 1934, held not to have placed defendant in double jeopardy, the evidence required in the two cases being different. *Sims v. Rives* (66 App. D. C. 24, 84 Fed. (2d) 871, cert. den. 298 U. S. 682, 80 L. Ed. 1402, 56 Sup. Ct. 960).

#### § 25-108 [20: 1908]. Alcohol for nonbeverage purposes not affected—Penalty for unlawful sales.

No provision of this chapter shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely:

(a) Denatured alcohol produced and used pursuant to Acts of Congress and regulations promulgated thereunder;

(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

(c) Flavoring extracts, syrups, and food products;

(d) Scientific, chemical, mechanical, and industrial products.

Any person who shall knowingly sell any of the products enumerated in paragraphs (a), (b), (c), or (d) for beverage purposes, or who shall sell any of the same under circumstances from which he might reasonably deduce the intention of the purchaser to use them for such purposes, shall be subject to the penalties provided for in section 25-132. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 8.)

#### CROSS REFERENCE

Exemption from taxation, § 25-124.

#### STATUTORY REFERENCE

Provisions for regulation of denatured or industrial alcohol, U. S. C., title 27, §§ 71-89.

#### § 25-109 [20: 1909]. Sale without license prohibited—Exceptions.

(a) No individual, partnership, association, or corporation shall, within the District of Columbia,



manufacture for sale, keep for sale, or sell any alcoholic beverage without having first obtained a license under this chapter for such manufacture or sale, except as provided in section 25-131.

(b) No individual shall, within the District of Columbia, offer for sale or solicit any order for the sale of any alcoholic beverage, irrespective of whether such sale is to be made within or without the District of Columbia, unless such individual has first obtained a license of the character described in section 25-111, subsection (k).

Nothing in this subsection shall apply to any offer for sale or solicitation made upon the premises designated in the license of the vendor.

No individual shall within the District of Columbia offer any beverage for sale to, or solicit orders for the sale of any beverage from, any person not a licensee under this chapter, irrespective of whether such sale is to be made within or without the District of Columbia.

(c) A physician may administer alcoholic beverages to a bona fide patient in cases of actual need when, in the judgment of the physician, the use of alcoholic beverages is necessary.

(d) A dentist who deems it necessary that a bona fide patient being then under treatment by him is in actual need of and should be supplied with alcoholic beverages as a stimulant or restorative, may administer to the patient alcoholic beverages.

(e) A veterinarian who deems it necessary may, in the course of his practice, administer or cause to be administered alcoholic beverages to a dumb animal.

(f) A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer or cause to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes, and may charge for the alcoholic beverages so administered. (Jan. 24, 1934, 48 Stat. 323, ch. 4, § 9.)

#### COMPILER'S NOTE

As originally enacted, the exception set forth included § 32 of the act as well as § 31 (§ 25-131). Section 32 dealt with manufacturer's permits under the National Prohibition Act and has been omitted as obsolete. See also compiler's notes to §§ 25-101 and 25-132.

#### § 25-110 [20: 1910]. Licenses — Applications for — To whom granted—Records.

The board is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor, for the manufacture, sale, offer for sale, or solicitation of orders for sale of alcoholic beverages within the District of Columbia. The board shall keep a full record of all applications for licenses, and of all recommendations for and remonstrances against the granting of licenses and of the action taken thereon. (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 10.)

#### § 25-111 [20: 1911]. License classifications—Fees.

Licenses issued under authority of this chapter shall be of eleven kinds: (a) *Manufacturer's license, class A.*—To operate a rectifying plant, a distillery, or a winery. Such a license shall authorize the holder thereof to operate a rectifying plant for the manufacture of the products of rectification by purifying or combining alcohol, spirits, wine, or beer; a distillery for the manufacture of alcohol or spirits by distillation or redistillation; or a winery for the manufacture of wine; at the place therein described, but such license shall not authorize more than one of said activities, namely, that of a rectifying plant, a distillery, or a winery, and a separate license shall be required for each such plant. Such a license shall also authorize the sale from the licensed place of the products manufactured under such license by the licensee to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this chapter. The annual fee for such license for a rectifying plant shall be \$3,500; for a distillery shall be \$3,500; and for a winery shall be \$500: *Provided, however,* That if a manufacturer shall operate a distillery only for the manufacture of alcohol and more than 50 per centum of such alcohol is sold for nonbeverage purposes, the annual fee shall be \$1,000. If said manufacturer holding a license issued at the rate last mentioned shall sell during any license period 50 per centum or more of said alcohol for beverage purposes, he shall pay to the Collector of Taxes the difference between the license fee paid and the license fee for a distiller of spirits.

(b) *Manufacturer's license, class B.*—To operate a brewery. Such a license shall authorize the holder thereof to operate a brewery for the manufacture of beer at the place therein described. It shall also authorize the sale from the licensed place of the beer manufactured under such license to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer. Said manufacturer may sell beer to the consumer only in barrels, kegs, and sealed bottles and said barrels, kegs, and bottles shall not be opened after sale, nor the contents consumed, on the premises where sold. The annual fee for such license shall be \$2,500.

(c) *Wholesaler's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this chapter for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any



other person except as may be provided by regulations promulgated by the Commissioners under this chapter. No holder of such a license except a wholesale druggist or a wholesale grocer shall be engaged in any business on the premises for which the license is issued other than the sale of alcoholic and non-alcoholic beverages. The annual fee for such license shall be \$1,500.

(d) *Wholesaler's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described to another license holder for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, or to a consumer in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale nor the contents consumed on the premises where sold. The annual fee for such license shall be \$750.

(e) *Retailer's license, class A.*—Such a license shall authorize the holder thereof to sell beverages from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$750.

(f) *Retailer's license, class B.*—Such a license shall authorize the holder thereof to sell beer and light wines from the place therein described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, which said barrel, keg, sealed bottle, or other closed container shall not be opened nor the contents consumed on the premises where sold. Such license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be \$100.

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of restaurants and passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, said beverages may be sold and served only in the private room of

a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$500 per annum; for a hotel, under one hundred rooms, \$500 per annum; for a hotel of one hundred or more rooms, \$1,000 per annum; for a club, \$250 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, \$2 per month or \$10 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$60; for all other passenger-carrying marine vessels serving meals, \$50 per month or \$500 per annum.

(h) *Retailer's license, class D.*—Such a license shall be issued only for a bona fide restaurant, tavern, hotel, or club, or a passenger-carrying marine vessel serving meals, light lunches, or sandwiches, or a club car or a dining car on a railroad. Such a license shall authorize the holder thereof to sell beer and light wines at the place therein described for consumption only in said place. Except in the case of clubs and hotels, no beer or light wines shall be sold or served to a customer in any closed container. In the case of restaurants, taverns, and passenger-carrying marine vessels and club cars or dining cars on a railroad, said beer and light wines shall be sold or served only to persons seated at public tables or at bona fide lunch counters, except that beer and light wines may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, beer and light wines may be sold and served only in the private room of a registered guest or to persons seated at public tables or at bona fide lunch counters or to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. And in the case of clubs, beer and light wines may be sold and served in the private room of a member, or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license.

The annual fee for such a license shall be \$200; except that in the case of a marine vessel the fee shall be \$20 per month or \$200 per annum, and in the case of each railroad dining car or club car \$1



per month or \$10 per annum: *Provided*, That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of \$30.

(i) *Retailer's license, class E*.—Such a license shall authorize a person entitled to retail, compound, and dispense medicines and poisons, to sell from the place therein described, beverages in sealed packages, not to exceed one quart each, for medical purposes, and only upon prescription of a duly-licensed practicing physician for liquors as defined by the United States Pharmacopoeia. Such package shall not be opened after sale, nor its contents consumed, on the premises where sold. Such prescription, when filled, shall be canceled by writing across its face the word "Canceled" together with the date on which it is presented and filled, and such prescriptions shall be numbered consecutively as filled and kept on file in consecutive order. No such prescription shall be refilled. The annual fee for such license shall be \$25.

(j) *Retailer's license, class F*.—Such license shall authorize the holder thereof temporarily to sell beer and light wines on the premises therein described for consumption on the premises where sold. Such permits may be issued for a banquet, picnic, bazaar, fair, or similar public or private gathering, where food is served for consumption on the premises. No beer or light wines shall be sold or served to a customer in any unopened container. The issuance of such a permit shall be solely in the discretion of the Board. The fee for each such license shall be \$5 per day.

(k) *Solicitor's licenses*.—Such a license shall authorize the licensee to offer for sale to or solicit orders from licensees for the sale of any beverage.

A solicitor's license shall set forth the name of the vendor whom the solicitor represents and such solicitor shall not represent any vendor whose name does not appear upon such license.

The annual fee for such license shall be \$100.

Nothing in this chapter shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended (32 Stat. 622, ch. 1352, § 7). (Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 13, 1934, 48 Stat. 997, ch. 583; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 398, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2.)

#### AMENDMENTS

The act of April 30, 1934, amended this section by adding at the end of the first paragraph of subsection (c): "It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the commissioner under the act."

The act of June 18, 1934, inserted in the third sentence of subsection (g) the following words: "and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more." This act also changed the provisions as to fees.

Act of July 2, 1935, amended subsections (g) and (h) by adding at the end of the first paragraph of each the words: "All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser."

The act of August 27, 1935, amended the first sentences of subsections (a), (b), (c), and (d) by inserting the words "under this act" following the words "license holder." In subsections (b), (c), and (d), "dealer outside of the District of Columbia" was changed to read "dealer licensed under the laws of any state or territory of the United States," and in subsection (c) the second sentence was added. In subsection (h) the words "and light wines" were inserted after "beer" in the fourth and fifth sentences.

The 1938 act amended the second paragraph of subsection (g) to read as above, and added the proviso to subsection (h).

#### CROSS REFERENCES

Refund of fees under Beverage License Act, § 25-131.

Refund of fees when license refused, § 47-1018.

§ 25-112 [20:1911a]. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.

The Commissioners of the District of Columbia are hereby authorized in their discretion to require by regulation that no licensee holding a retailer's license, class A, B, C, D, or E, as provided in this chapter, shall transport, or cause to be transported, in any manner whatsoever into the District of Columbia any alcoholic beverage (except the regular stock on hand in a licensed railroad club or dining car or passenger-carrying marine vessel); and said Commissioners are also authorized to permit such importation under a special permit or permits, to be issued by the Alcoholic Beverage Control Board, upon application by licensee and upon such terms and conditions and in such manner as may be prescribed by the said Commissioners. Any such regulation, permit, or system of permits may be suspended, amended, revoked, or abolished at any time by the said Commissioners. (Aug. 27, 1935, 49 Stat. 903, ch. 756, § 18.)

#### CROSS REFERENCES

Other provisions concerning rules and regulations, § 25-107 and notes.

Other provisions concerning transportation, §§ 25-137, 25-138.

§ 25-113 [20:1912]. Holding of license of more than one class forbidden—Definition of "licensee."

(a) The holder of a manufacturer's or wholesaler's license issued hereunder shall not be entitled to hold any other class of license. A person, not licensed hereunder, owning an establishment for the manufacture of beverages located outside the District of Columbia may hold one wholesale license, and shall not be entitled to hold any other license.

(b) No licensee holding a retailer's license, class C or class D, shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, any license other than retailer's licenses class C, class D, or class E. No licensee holding a retailer's license class A or class B shall, by direct ownership, stock ownership, or interlocking directors, hold, directly or indirectly, more than one license except retailer's licenses class E. When used in this subsection the word "licensee" shall include any stockholder holding directly or indirectly twenty-five per centum or more of the common stock or any officer of such licensee if such licensee is a corporation. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 12.)

#### CROSS REFERENCE

Business interests forbidden, §§ 25-105, 25-115, 25-119, 25-120.



§ 25-114 [20: 1913]. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however*, That the holder of a manufacturer's or wholesaler's license or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8.)

#### AMENDMENT

Prior to the 1935 amendment the first sentence of the proviso read as follows: "*Provided, however*, That the holder of a manufacturer's or wholesaler's license may store beverages, with the consent of the board, upon premises other than designated in the license."

§ 25-115 [20: 1914]. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property-owners—Removal of bonded liquor from Government warehouses—Bond—Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is a citizen of the United States, not less than twenty-one years of age, and has not, within five

years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

4. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

(b) Before granting a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, of the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public ad-



vertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall be deemed guilty of a violation of this chapter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D, to be issued for a hotel or club, or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however,* That none of the provisions of this chapter shall prevent the Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided,* That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the

members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioners or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327-329, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3.)

#### AMENDMENTS

The 1937 amendment added the last sentence of paragraph (b) and deleted a provision in paragraph (d) requiring a bond.

The 1938 amendment added the rest of the first sentence of paragraph (c) following the comma after the word "business."

#### CROSS REFERENCES

Business interests forbidden, §§ 25-105, 25-113, 25-119, 25-120.

Other provisions concerning rules and regulations, § 25-107 and notes.

For the National Prohibition Act, as amended and supplemented, see Compiler's Note, § 25-101.

§ 25-116 [20: 1915]. Issuing licenses in certain districts restricted.

No retailer's licenses except of classes B or E shall be issued for any business conducted in a residential-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission, except for a restaurant or tavern conducted in a hotel, apartment house, or club, and then only when the entrance to such restaurant or tavern is entirely inside of the hotel, apartment house, or club and no sign or display is visible from the outside of the building.

No wholesaler's license shall be issued for any establishment conducted in such residential-use district and no manufacturer's license shall be issued for any establishment conducted in a residential or first commercial-use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission. Nothing herein contained shall be construed as permitting the establishment of a bottling works in violation of said zoning regulations. (Jan. 24, 1934, 48 Stat. 328, ch. 4, § 15; June 16, 1934, 48 Stat. 974, ch. 552.)

#### AMENDMENT

The June 16, 1934 amendment added class B to the exception.

#### CROSS REFERENCE

See compiler's note to § 25-132.

§ 25-117 [20: 1916]. Transfer of license—Fee—Conditions imposed.

No license shall be transferred by the licensee to any other person or to any other place, except with the written consent of the Board, upon a regular application therefor in writing and after notice and hearing, as herein provided for an original application for license, and the fee to be paid by the party applying for such transfer shall be twenty-five dol-



lars, which shall be paid to the Collector of Taxes for the District of Columbia before such transfer is made: *Provided*, That the Board shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this law or the laws against gambling in the District of Columbia. (Jan. 24 1934, 48 Stat. 330, ch. 4, § 16.)

**§ 25-118 [20: 1917]. Revocation of license—Causes—Hearing—Discretionary closing for 1 year.**

If any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Commissioners' regulations adopted under authority of this chapter. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3.)

**AMENDMENT**

The 1935 amendment added the words "or suspended" both times they appear and the words "in case of revocation or in case of suspension for a period of more than thirty days" in the first paragraph, and added the second paragraph which the 1937 amendment amended by deleting the word "shall" and inserting in lieu thereof the word "may" in the second line hereof.

**CROSS REFERENCES**

General penalties for violations of chapter or rules and regulations, § 25-132.

Refund of fees when license refused, § 47-1018.

**§ 25-119 [20: 1918]. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.**

If any manufacturer of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage, or lien, or by any other means shall have such a substantial interest, whether direct or indirect, in the business of any wholesale or retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer, the Board may, in its discretion, revoke the license issued in respect of the business in which such manufacturer is interested, subject to review by the Commissioners as herein provided. No such manufacturer of beverages shall loan or give any money to any wholesale or retail licensee, or sell, rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however*, That with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a wholesale or retail licensee any service or article of property costing such manufacturer not more than \$10. No wholesale or retail licensee shall receive or accept any loan or gift of money from any such manufacturer or purchase from, rent from, borrow or receive by gift from such manufacturer any equipment, furniture, fixtures, or property, or accept or receive any service from such manufacturer: *Provided, however*, That, with the prior approval of the Board, a wholesale or retail licensee may purchase from, rent from, borrow, or receive by gift from such manufacturer any service or article of property costing such manufacturer not more than \$10. Nothing herein contained, however, shall prohibit the sale of alcoholic and nonalcoholic beverages and the reasonable extension of credit therefor by a manufacturer to a wholesale or retail licensee. When used in this section the word "manufacturer" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a manufacturer of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E, or to the wholesale license held by a person not licensed as a manufacturer hereunder owning an establishment for the manufacture of beverages outside of the District of Columbia. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 18; Aug. 27, 1935, 49 Stat. 902, ch. 756, § 15.)

**AMENDMENT**

The 1935 amendment deleted the words "to such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee any equipment, furniture, fixtures or property, or give or sell any service to such licensee for less than the fair market value thereof," and inserted in lieu thereof the remainder of the second sentence after the word "sell" the first time it is used; inserted the words "rent from, borrow or receive by gift from" in the third sentence;



deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such manufacturer" following the word "manufacturer" the second time it is used in said sentence; deleted in the third sentence the words "for less than the fair market value thereof" and inserted in lieu thereof the proviso in such sentence; deleted from the last sentence the words "hereunder owning an establishment for the manufacture of beverages" and inserted in lieu thereof the concluding words of the last sentence following the word "licensed."

## CROSS REFERENCES

Business interests forbidden, §§ 25-105, 25-113, 25-115, 25-120.

Other provisions concerning sale of beverages on credit, §§ 25-120, 25-133.

§ 25-120 [20: 1919]. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

If any wholesaler of beverages, whether licensed hereunder or not, by direct ownership, stock ownership, interlocking directors, mortgage or lien or by any other means shall have such a substantial interest either direct or indirect in the business of any retail licensee or in the premises on which said business is conducted as in the judgment of the Board may tend to influence such licensee to purchase beverages from such wholesaler, the board may in its discretion revoke the license issued in respect of the business in which such wholesaler is interested, subject to review by the commissioners as herein provided. No such wholesaler of beverages shall lend or give any money to any retail licensee or sell to such licensee, any equipment, furniture, fixtures, or property, except merchandise sold at the fair market value for resale by such licensee, or rent, loan, or give to such licensee any equipment, furniture, fixtures, or property, or give or sell any service to such licensee: *Provided, however, That, with the prior approval of the Board, a wholesaler may sell, give, rent, or loan to such licensee any service or article of property costing such wholesaler not more than \$10. No retail licensee shall receive or accept any loan or gift of money from any such wholesaler or purchase from any such wholesaler any equipment, furniture, fixtures, or property, except merchandise purchased at the fair market value for resale, or rent from, borrow, or receive by gift from such wholesaler any equipment, furniture, fixtures, or property, or receive any service from such wholesaler: Provided, however, That with the prior approval of the Board, a retail licensee may purchase from, rent from, borrow or receive by gift from such wholesaler any service or article of property costing such wholesaler not more than \$10. Nothing herein contained, however, shall prohibit the reasonable extension of credit by a wholesaler for merchandise sold to a retail licensee for resale as herein permitted. When used in this section the word "wholesaler" shall include any stockholder holding directly or indirectly 25 per centum or more of the common stock or any officer of a wholesaler of beverages, if a corporation, whether licensed hereunder or not. This section shall not apply to retail licenses, class E. (Jan. 24, 1934, 43 Stat. 331, ch. 4, § 19; Aug. 27, 1935, 49 Stat. 903, ch. 756, § 16.)*

## AMENDMENT

The 1935 amendment deleted from the second sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent, loan or give to such licensee" following the word "licensee" the first time it is used in said sentence; added the words "except merchandise sold at the fair market value for resale by such licensee, or rent, loan or give to such licensee any equipment, furniture, fixtures, or property" in the second sentence; added the proviso in the second sentence; deleted from the third sentence the words "for less than the fair market value or upon a conditional sale agreement or chattel trust, or rent from, borrow or receive by gift from such wholesaler" following the word "wholesaler" the second time it is used in said sentence; added the proviso in the third sentence; added the last five words in the fourth sentence.

## CROSS REFERENCES

Business interests forbidden, §§ 25-105, 25-113, 25-115, 25-119.

Other provisions concerning sale of beverages on credit, §§ 25-119, 25-133.

§ 25-121 [20: 1920]. Sale to minors or intoxicated persons—Liability of licensee.

Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, either for his own use or for the use of any other person; or the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of the age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages. (Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10.)

## AMENDMENT

The 1935 amendment added the words "service or delivery" following the word "sale" following the first semicolon.

§ 25-122 [20: 1921]. License forfeited on licensee becoming bail.

If any person holding a license under this chapter shall become bail for any person complained of for the violation of any provisions of this chapter, his license shall become void as of the date of becoming such bail. (Jan. 24, 1934, 43 Stat. 331, ch. 4, § 21.)

§ 25-123 [20: 1922]. Monthly reports of sales and purchases.

(a) Each holder of a manufacturer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, manufactured during the preceding calendar month. Beverages shall not be considered as manufactured within the meaning of this section and section 25-124 until they are ready for sale.

(b) Each holder of a wholesaler's or retailer's license shall, on or before the 10th day of each month, furnish to the Board on a form to be prescribed by the Commissioners, a statement under oath, showing the quantity of each kind of beverages, except beer, purchased by him during the preceding calendar



month, and also showing the date of each such purchase, the name of the person from whom purchased, giving the license number of the vendor, if licensed hereunder, and the quantity and kind of beverages in each such purchase.

(c) The Commissioners may at any time suspend or revoke in whole or in part the requirements of this section. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 22; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 2.)

#### AMENDMENT

The April 30, 1934 amendment added paragraph (c).

#### CROSS REFERENCE

Report of sales of beer, § 25-138.

§ 25-124 [20: 1923]. Beverage tax — Stamps — Seizure and disposition of beverage upon which tax not paid—Absence of stamp prima facie evidence of nonpayment—Penalty for counterfeiting or forging stamps—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District of Columbia by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District of Columbia by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) A tax of 10 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, except champagne, or any wine artificially carbonated and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 15 cents on every wine-gallon of champagne or any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 50 cents on every wine-gallon of spirits, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) and a tax of \$1.10 on every wine-gallon of alcohol, and a proportionate tax at a like rate on all fractional parts of such gallon.

(b) Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes shall be collected and paid by the affixture of a stamp or stamps secured from the Collector of Taxes of the District of Columbia denoting the payment of the amount of the tax imposed by this chapter upon such beverage, such affixture to be upon the immediate container of the beverage, unless the Commissioners shall by regulation permit otherwise.

(d) The Collector of Taxes of the District of Columbia shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the taxes imposed by this chapter, and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(e) Upon taxable beverages manufactured in the District of Columbia by a manufacturer licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the beverage

from the place of business or warehouse of the said manufacturer for delivery to a purchaser. Upon taxable beverages, except taxable light wines, imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the stamps required by this chapter shall be affixed before the removal of the beverage from the place of business or warehouse of the said wholesaler for delivery to a purchaser; upon taxable light wines imported or brought into the District of Columbia by any wholesaler licensed under this chapter, the said stamps shall be affixed within twenty-four hours (excluding Sunday from the count) after the wines are received at the licensed premises of the wholesaler and before said wines are sold by such wholesaler. Upon beverages purchased outside the District of Columbia by any retailer licensed under this chapter, the stamps required by this chapter shall be affixed within twenty-four hours (excluding Sunday from the count) after the beverage is received at the licensed premises of said retailer and before said beverage is sold by such retailer.

(f) No person shall use or cause to be used for the payment of any tax imposed by this chapter a stamp or stamps already theretofore used for the payment of any such tax.

(g) No tax shall be levied and collected on any alcohol exempt from tax under the laws of the United States, or on any alcohol sold for nonbeverage purposes by the holder of a manufacturer's or wholesaler's license, in accordance with the regulations promulgated by the Commissioners.

(h) If any Act of Congress shall hereafter prescribe for a Federal volume tax on alcoholic beverages under which a portion of said tax shall be returned to the District of Columbia, the taxes levied under this section shall not be collected after the effective date, January 24, 1934.

(i) The possession by any licensee of any beverage after its removal from the licensed premises of a manufacturer or wholesaler within the District of Columbia or after twenty-four hours (Sunday being excluded from the count) after its receipt from outside the District of Columbia, upon which the tax required has not been paid, shall render such beverage liable to seizure wherever found, and to forfeiture by the District of Columbia. And the absence of the proper stamps from any container (or wrapper if such be permitted) after the time at which the affixture of the stamp is required by this chapter shall be notice to all persons that the tax has not been paid thereon and shall be prima facie evidence of the nonpayment thereof. Such beverage so liable to forfeiture shall be proceeded against in the District Court of the United States for the District of Columbia by the corporation counsel of the District of Columbia, and if condemned, the said beverage shall be disposed of by destruction or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty,



and all such proceedings shall be at the suit of and in the name of the District of Columbia.

(j) Any person who shall counterfeit or forge any stamp required by this chapter shall, upon conviction, be subject to a fine not exceeding \$5,000 or to imprisonment for a period of not more than two years, or to both such fine and imprisonment.

(k) No taxing provision of subsection (a), (c), (e), and (i) of this section shall apply in the case of a passenger-carrying marine vessel operating in and beyond the District of Columbia, or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, except as set forth in this subsection.

The tax as specified in subsection (a) of this section shall be paid on all such beverages as are sold and served by said licensee while passing through or when at rest in the District of Columbia, in the following manner: A record shall be made and kept by the licensee for each passenger-carrying marine vessel operating in and beyond the District of Columbia, and for each club car or dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or class D, has been issued under this chapter, of all alcoholic beverages sold and served in the District of Columbia, which record shall be subject to inspection by the board. Each holder of such a license shall, on or before the 10th day of each month, forward to the board on a form to be prescribed by the commissioners, a statement under oath, showing the quantity of each kind of beverage, except beer and nontaxable light wines, sold under such license in the District of Columbia during the preceding calendar month, to which said statement shall be attached stamps denoting the payment of the tax imposed under this chapter upon the beverages set forth in said report. (Jan. 24, 1934, 48 Stat. 332, ch. 4, § 23; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 3; June 18, 1934, 48 Stat. 1014, 1015, ch. 600, §§ 1, 2; Aug. 27, 1935, 49 Stat. 901, 903, ch. 756, §§ 11, 17.)

#### COMPILER'S NOTE

Section 24 of the act of January 24, 1934, as amended by § 4 of the act of April 30, 1934, which appeared as § 1294 of D. C. 1929, Supp. V, title 20, is omitted as obsolete.

#### AMENDMENTS

The April 30, 1934, amendment struck out the former section and inserted in lieu thereof the present section down through (j), except as amended as hereafter shown.

The June 18, 1934, amendment amended subsection (a) by adding the exception, and amended subsection (e) by inserting the word "taxable" after the word "upon" in the beginning of the first and the beginning of the second sentence.

The 1935 amendment added subsection (k) and, in subsection (a) changed the rate from 35 cents to 10 cents in (1) and from 50 cents to 15 cents in (2).

#### CROSS REFERENCES

Tax on beer, § 25-138.

When beverage considered "manufactured," § 25-123 (a).

§ 25-125 [20: 1925]. Sale, distribution, furnishing of beverages by convicted persons and minors.

No licensee under this chapter shall allow any person who has, within ten years prior thereto, been

convicted of any felony, to sell, give, furnish, or distribute any beverage, nor allow any minor under the age of twenty-one years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of eighteen years to sell, give, furnish, or distribute beer and light wines. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12.)

#### AMENDMENT

The 1935 amendment deleted the words "within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented or," which followed the words "convicted of," and added the words "and light wines" both times they now appear.

§ 25-126 [20: 1926]. Power of board to compel testimony—Witness fees—Perjury.

Said board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation, or to produce all books, records, papers, documents, or other legal evidence as to any matter affecting the operation of this chapter and any member of said board shall have the power to administer all oaths and affirmations for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any witness having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event any member of the board may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Witnesses, other than those employed by the District of Columbia or the United States Government, summoned to appear before said board shall be entitled to the same fees as are paid witnesses for attendance before the District Court of the United States for the District of Columbia, but said fees need not be paid said witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before said board. Any person who shall wilfully swear falsely in any proceeding, matter, or hearing before said board shall be deemed guilty of perjury. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 26.)

§ 25-127 [20: 1927]. Intoxicated person not to operate locomotive, street car, elevator, watercraft, or horse-drawn vehicle—Penalty—Traffic acts not affected.

(a) No person shall be intoxicated while in charge of or operating any locomotive or while acting as a conductor or brakeman of a car or train of cars, or while in charge of or operating any street car, elevator, watercraft, or horse-drawn vehicle in the District of Columbia.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$300, or by imprisonment for not longer than three months, or by both such fine and imprisonment in the discretion of the court.



(c) Nothing herein contained shall be construed as repealing or modifying any provision of sections 40-301 to 40-304 and 40-603 to 40-612. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27.)

COMPILER'S NOTE

Sections 40-301 to 40-304, 40-603 to 40-612 contain provisions concerning operation of motor vehicles.

§ 25-128 [20: 1928]. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises; or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverage on the premises is prohibited by this chapter or by the regulations promulgated thereunder. No person shall be drunk or intoxicated in any street, alley, park, or parking, or in any vehicle in or upon the same or in any place to which the public is invited or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person.

(b) Any person violating the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than thirty days or by both such fine and imprisonment in the discretion of the court for the first offense; by a fine of not more than \$200 or by imprisonment for not more than sixty days or by both such fine and imprisonment in the discretion of the court for the second offense, or by a fine of not more than \$500 or by imprisonment for not more than six months or by both such fine and imprisonment in the discretion of the court for each subsequent offense. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14.)

AMENDMENT

The 1935 amendment added that part of the first sentence of paragraph (a) that follows the last semicolon, and that part of paragraph (b) that follows the word "court" the first time it appears in the said paragraph.

§ 25-129 [20: 1929]. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of the police court of the District of Columbia or by a United States Commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, or sold in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, or selling may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

(b) A search warrant can not be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant signed by him with his name of office to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."



(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the police court.

(n) Whoever shall knowingly and wilfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years.

(o) If the accused be discharged, the beverages and other property seized shall be returned to the person in whose possession they were found; if he be convicted, the said beverages and other property shall be forfeited, and may be destroyed by the police department or delivered for medicinal, mechanical, or scientific uses to any department or agency of the United States Government or the District of Columbia government or any hospital or other charitable institution in the District of Columbia, or sold at public auction, as the court may direct.

(p) If any of said property so seized, other than the said beverages and the containers thereof, shall be subject to a lien which is established by intervention or otherwise to the satisfaction of the court as being bona fide and as having been created without the lienor's having any notice that said property was to be used in connection with the illegal manufacture for sale, keeping for sale, or selling of alcoholic beverages, the court, upon the conviction of the accused, shall order a sale of said property at public auction and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure and the cost of the sale, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof. (Jan. 24, 1934, 48 Stat. 334, ch. 4, § 29.)

#### CROSS REFERENCES

Other provisions concerning disposition of property coming into hands of police, § 4-151 et seq.

Search warrants generally, § 23-301 et seq.

§ 25-130 [20: 1930]. Minor misrepresenting age to procure beverage—Penalty.

Any minor who falsely represents his age for the purpose of procuring any beverage shall be deemed guilty of a misdemeanor and be fined for each offense not more than \$25 and, in default in the payment of such fine, shall be imprisoned not exceeding ten days. (Jan. 24, 1934, 48 Stat. 335, ch. 4, § 30.)

§ 25-131 [20: 1931]. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

After the date of the approval of this chapter no permit shall be issued under the Act of Congress entitled "An Act to provide revenue for the District of Columbia by the taxation of beverages and for other purposes," approved April 5, 1933, and no permits

issued thereunder shall be renewed, but the Commissioners are hereby authorized to extend the expiration dates of permits issued under said act to a date designated by them not to exceed sixty days after the approval of this chapter, upon such terms and conditions, including the payment of such fees as the Commissioners may prescribe. Any permittee thereunder may make an application for a license under this chapter and, if said application is approved by the Board, such permittee shall surrender his permit and he shall be allowed a refund of the permit fee prorated as hereinafter provided. Any permittee under said Act of April 5, 1933, may surrender his permit and receive a refund of the permit fee prorated from the date of surrender of such permit to the date of expiration thereof. All such refunds shall be paid from the permanent indefinite appropriation for refunding erroneously paid taxes in the District of Columbia. All permits issued under said Act of April 5, 1933, shall remain in force and effect for the respective periods for which they were issued, unless sooner surrendered. After the approval of this chapter no taxes shall be collected under section 11 of the Act approved April 5, 1933. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 31.)

#### COMPILER'S NOTE

The Beverage License Act, §§ 1801-1816, inclusive, of D. C. 1929 Supp. V, title 20 (act of Apr. 5, 1933, 48 Stat. 25, ch. 19, §§ 1-16) was repealed by § 31 of the act of 1934, effective one year from the date of approval of this chapter

§ 25-132 [20: 1933]. Penalty for violation where no specific penalty provided—Prosecution by corporation counsel in police court—Prosecution for felonies by United States Attorney.

Whosoever violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated pursuant thereto, shall be punished by a fine of not more than \$1,000 or by imprisonment for not longer than one year or by both such fine and imprisonment in the discretion of the court.

Prosecutions for violations of this chapter shall be on information filed in the police court by the corporation counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States Attorney in and for the District of Columbia or any of his assistants. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33.)

#### COMPILER'S NOTE

Section 32 of the act of 1934, which appeared as title 20, § 1932 of Supp. V of D. C. Code 1929, is omitted as obsolete. See also note to § 20-101.

Section 34 of the said act, which appeared as title 20, § 1934 of Supp. IV of D. C. Code 1929, provided as follows: "All laws which prohibit the sale of alcoholic beverages in certain defined sections or parts of the District of Columbia are hereby repealed."

#### NOTES TO DECISIONS

##### FAILURE TO REPORT VIOLATION

It is an offense for any officer to fail to report prohibition violations to the corporation counsel. *Donnelley v. United States* (276 U. S. 505, 72 L. Ed. 767, 48 Sup. Ct. 400).

##### OFFICERS OF THE UNITED STATES

Prohibition agent appointed by the commissioner, with the approval of the Secretary of Treasury, is not an "officer of the United States"; however police captains are



officers of the District but not of the United States. *Keehn v. United States* ((C. C. A. 1), 300 Fed. 493).

**§ 25-133 [20: 1935]. Sale by retailer of beverages on credit prohibited—Exceptions.**

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. This section shall not prohibit a club from extending credit to its members or the guests of members or a hotel from extending credit to its registered guests. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35.)

**CROSS REFERENCE**

Other provisions concerning sale of beverages on credit, §§ 25-119, 25-120.

**§ 25-134 [20: 1936]. Containers to be labeled—Content.**

No rectified or blended spirits shall be sold unless the container in which it is sold shall bear a legible label firmly affixed thereto stating the nature and percentage of each ingredient therein (except water), the age of each such ingredient, and the alcoholic content of such spirits by volume. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 36.)

**§ 25-135 [20: 1937]. Offenses under National Prohibition Act to be prosecuted.**

Any offense committed, or any right accrued, or any penalty or obligation incurred, or any seizure or forfeiture made, prior to the effective date of this chapter, under the provisions of the National Prohibition Act, as amended and supplemented, or under any permit or regulation issued thereunder, or under any other provision of law repealed by this chapter, may be prosecuted or enforced in the same manner and with the same effect as if this chapter had not been enacted. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 37.)

**§ 25-136 [20: 1938]. Saving clause.**

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Jan. 24, 1934, 48 Stat. 337, ch. 4, § 38.)

**§ 25-137 [20: 1939]. Unlawful transportation—Penalty.**

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(d) The penalty for violation of this section shall consist of the forfeiture of the beverages transported, imported, or shipped or caused to be transported, imported, brought, or shipped in violation of this section, and a fine of not more than \$500 or imprisonment for not more than six months. (Jan. 24, 1934, ch. 4, § 39, as added Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4.)

**CROSS REFERENCE**

Other provisions concerning transportation, §§ 25-112, 25-138.

**§ 25-138 [20: 1940]. Tax on beer.**

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of 50 cents for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the Commissioners shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 10th day of each month, furnish to the assessor of the District of Columbia, on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the 15th day of each month, pay to the collector of taxes of the District of Columbia the tax hereby imposed upon the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

(2) No licensee holding a retailer's license shall transport or cause to be transported into the District of Columbia for resale any beer, other than the regular stock on hand in a passenger-carrying marine vessel operating in and beyond the District of Columbia or a club car or a dining car on a railroad operating in and beyond the District of Columbia, for which a retailer's license, class C or D, has been issued under this chapter, unless such licensee has first obtained a permit so to do from the Alcoholic Beverage Control Board. No such permit shall issue until the tax imposed by this section shall have been paid for the beer for which the permit is requested. Such permit shall specifically set forth the quantity, character and brand or trade name of the beer to be transported

and the names and addresses of the seller and of the purchaser. Such permit shall accompany such beer during its transportation in the District of Columbia to the licensed premises of such retail licensee and shall be exhibited upon the demand of any police officer or duly authorized inspector of the Board. Such permit shall, immediately upon receipt of the beer by the retail licensee, be marked "canceled" and retained by him.

(b) The Commissioners are authorized and empowered to prescribe by regulation such other methods or devices or both for the assessment, evidencing of payment, and collection of the taxes imposed by

this section in addition to or in lieu of the method hereinbefore set forth whenever, in their judgment, such action is necessary to prevent frauds or evasions.

(c) The taxes imposed hereby, when collected, shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Jan. 24, 1934, ch. 4, § 40, as added May 16, 1933, 52 Stat. 376, ch. 223, § 8.)

#### CROSS REFERENCES

Beverage taxes generally, § 25-124.

Other provisions concerning rules and regulations, § 25-107 and notes.

Other provisions concerning transportation, §§ 25-112, 25-137.





## TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chap.	Sec.
1. Banking institutions in general.....	26-101
2. Joint accounts—Adverse claimants—Trust accounts.....	26-201
3. Trust, loan, mortgage, safe deposit and title corporations.....	26-301
4. Building associations.....	26-401
5. Credit unions.....	26-501
6. Money lenders—Licenses.....	26-601

### Chapter 1.—BANKING INSTITUTIONS IN GENERAL

Sec.	Sec.
26-101. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163 and 164 of Title 12, United States Code applicable.	
26-102. Examination by Comptroller of the Currency—Section 84 of Title 12, United States Code, extended to banks and trust companies—Reserves.	
26-103. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.	
26-104. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of United States Code extended to District of Columbia—Shareholders' liability not applicable to new stock issues.	
26-105. Shareholders' liability terminated after July 1, 1937—Conditions.	
26-106. Dividends—Payment—Restrictions.	
26-107. Restriction on use of words "bank" and "trust company"—Penalty.	
26-108. False statements against banking institutions—Penalty—Defense.	
26-109. Certain limitations on member banks of Federal Reserve System extended to nonmembers.	
26-110. Authority of notaries public employed by bank or trust company.	

§ 26-101 [5: 298]. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of Title 12, United States Code applicable.

All savings banks, or savings companies, or trust companies, or other banking institutions, organized under authority of any act of Congress to do business in the District of Columbia, or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received, shall be, and are hereby, required to make to the Comptroller of the Currency and to publish all the reports which national banking associations are required to make and publish under the provisions of sections 161, 163, and 164 of Title 12 of the Code of the Laws of the United States, and shall be subject to the same penalties for failure to make such reports as are therein provided, which penalties may be collected by suit before the District Court of the United States for the District of Columbia. And the Comptroller shall have power, when in his opinion it is necessary, to take possession of any such bank or

company, for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks: *Provided, however*, That banking institutions having offices or banking houses in foreign countries as well as in the District of Columbia shall only be required to make and publish the reports provided for in this section semiannually: *And provided further*, That all publications authorized or required by section 161 of Title 12 of the Code of the Laws of the United States, and all other publications authorized or required by existing law to be made in the District of Columbia, shall be printed in one or more daily newspapers of general circulation, published in the city of Washington. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 713; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1906, 34 Stat. 458, ch. 3533; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 2.)

#### COMPILER'S NOTE

This section does not repeal § 26-104.

#### AMENDMENTS

The 1902 amendment omitted a second paragraph of this section which read as follows: "And all savings or other banks now organized, or which shall hereafter be organized, in the District of Columbia, under any act of Congress, which shall have capital stock paid up in whole or in part, shall be subject to all the provisions of the Revised Statutes and of all acts of Congress applicable to national banking associations, so far as the same may be applicable to such savings or other banks: *Provided*, That any savings banks established before 1874 shall not be required to have a paid-up capital exceeding one hundred thousand dollars."

The 1906 amendment inserted in the first sentence the words "or organized by virtue of the laws of any of the States of this Union, and having an office or banking house located within the District of Columbia where deposits or savings are received," and added the second sentence.

The 1933 amendment changed the requirement as to publication from "two or more daily newspapers" to "one or more daily newspapers" and omitted the requirement that one of them should be a morning newspaper.

#### CROSS REFERENCES

Amendment of charter, § 29-238.  
 Application to credit unions, § 26-506.  
 Conveyances of real estate, formal requisites, § 45-302.  
 Excise and license taxes, § 47-1701 et seq.  
 Exempted from operation of Money Lenders Law, § 26-610.  
 General provisions concerning trust companies, § 26-301 et seq.  
 Liability as forwarding agent, § 28-1010.  
 Mistake or error in paying instruments, damages, § 28-1009.  
 Payment of checks or other instruments more than a year after date, § 28-1004.  
 Payment of forged or altered instruments, § 28-1008.  
 Suits, § 26-104.  
 Trust companies required to obtain certificate from Comptroller showing capital stock paid and deposit of securities with Comptroller, § 26-307.  
 Trust or joint deposits, accounts, or safety deposit boxes, § 26-201 et seq.  
 See compiler's note to § 26-102.



## NOTES TO DECISIONS

## AUTHORITY TO TAKE POSSESSION

Comptroller's authority and power to take possession was precisely the power given him by statute to take possession of a national bank; and, if we are correct in this position, then it follows equally that under the powers vested in him by law he was authorized to investigate the condition of the bank and declare it insolvent, and to appoint a receiver and make an assessment against the stockholders. *Dunn v. O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

## CONSTITUTIONALITY

This act was held constitutional. *Lyons v. Bank of Discount* ((C. C.-N. Y.), 154 Fed. 391).

## CONSTRUCTION

Determination of Comptroller of Currency as to necessity for assessments is conclusive. *Harper v. Moran* (64 App. D. C. 210, 76 Fed. (2d) 980, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

This act incorporates all the United States Bank Acts which have to do with administration in the case of insolvent banks and gives to the Comptroller the same control and management as in the case of national banks. *Hamilton v. Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

## FOREIGN BANK

Where foreign bank establishes house in District of Columbia, it submitted itself to the provisions of this act. *Washington Loan & Trust Co. v. Allman* (63 App. D. C. 116, 70 Fed. (2d) 282).

## INSOLVENCY

Where the Comptroller of the Currency has held a bank to be insolvent and has appointed a receiver for it, the court will not substitute its judgment for the judgment of the Comptroller, unless it appears by convincing proof that the Comptroller's action is plainly arbitrary, and made in bad faith. *United States Sav. Bank v. Morgenthau* (66 App. D. C. 234, 85 Fed. (2d) 811).

## LIABILITY OF STOCKHOLDERS

This section does not impose double liability on stockholders where State laws impose none. *Hamilton v. Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121); *Hamilton v. Bergling* (66 App. D. C. 83, 85 Fed. (2d) 249).

## NATIONAL SAVINGS BANK

The National Savings Bank of the District of Columbia was organized by the act of May 24, 1870, to accept deposits from depositors, to invest such funds for their benefit, and disburse revenues to the depositors. The incorporators have no shares and receive no profits, and have not such interest as will warrant an action for an account and distribution of the profits. *Huntington v. National Sav. Bank* (96 U. S. 388, 24 L. Ed. 777).

## PERSONAL LIABILITY OF DIRECTORS

Directors of bank not liable personally for deposits made after expiration of charter, where bank continued business. *Thompson v. Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

## RECEIVER

Receiver is the mere instrument of the Comptroller, and the declaration of the Comptroller, rather than the receiver, is the essential factor in determining the necessity for the assessment. Here the Comptroller has made the decision, and his conclusion is not subject to attack or open to review except for fraud. *Harper v. Moran* (64 App. D. C. 210, 76 Fed. (2d) 980).

Plaintiff was appointed and qualified as receiver of the bank by the Comptroller of the Currency. *Moran v. Schlossberg* (67 App. D. C. 163, 90 Fed. (2d) 408).

## REORGANIZATION PLAN

Comptroller of the Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was

right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (63 App. D. C. 311, 72 Fed. (2d) 179).

§ 26-102 [5: 299]. Examination by Comptroller of the Currency—Section 84 of Title 12, United States Code, extended to banks and trust companies—Reserves.

(a) The Comptroller of the Currency, in addition to the powers now conferred upon him by law for the examination of national banks, is hereby further authorized, whenever he may deem it advisable, to cause examination to be made into the condition of any bank mentioned in section 26-101. The expense of such examination shall be paid in the manner provided by section 482, Title 12, U. S. Code relating to the examination of national banks.

(b) The provisions of section 84, Title 12, U. S. Code are hereby extended to apply to all banks and trust companies doing business in the District of Columbia.

(c) Each bank and trust company doing business in the District of Columbia and not a member of the Federal Reserve System shall within six months from March 4, 1933, establish and maintain reserves on the same basis and subject to the same conditions as may by law on March 4, 1933, or thereafter be prescribed for national banks located in the District of Columbia, except that such reserves shall be established and maintained at such agency or agencies which shall have the approval of the Comptroller of the Currency: *Provided, however*, (1) That the required reserves carried by such bank or trust company with an agency or agencies may, under the regulations and subject to such penalties as may be prescribed by the Comptroller of the Currency, be checked against and withdrawn by such bank or trust company for the purpose of meeting existing liabilities, and (2) that no such bank or trust company shall at any time make new loans or shall pay any dividends unless and until the total reserves required by law shall be fully restored. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 714; Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 3.)

## COMPILER'S NOTES

The act of March 4, 1933, cited to text, entitled "An Act to further regulate banking, banks, trust companies, and building and loan associations in the District of Columbia, and for other purposes," provides in section 9 as follows: "The right to alter, amend, or repeal this act is hereby expressly reserved. If any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Section 84, title 12, U. S. Code, mentioned in paragraph (b), limits the liability of any person to bank.

## AMENDMENT

The first paragraph of this section originally provided that the Comptroller might cause examination of any bank in the District organized under act of Congress, that he might, at his discretion, report thereon to Congress, and that the expense should be paid out of any appropriation made by Congress for special bank examinations. The 1933 amendment changed this paragraph to read as above and added subsections (b) and (c).



## CROSS REFERENCES

Application to credit unions, § 26-506.  
 Examination of building and homestead associations, § 26-404.  
 General provisions concerning trust companies, § 26-301 et seq.  
 Suits, § 26-104.

## NOTES TO DECISIONS

## BANK ESTABLISHED IN ANOTHER STATE

When Alabama bank established a banking house in Washington, D. C., and all its officers and directors and substantially all of its stockholders resided in the District; and when all meetings of its stockholders and directors and all assets and records were kept here, the bank was governed by this section. *Thompson v. Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104).

Alabama corporation doing business in Washington, D. C., paying dividends and making reports to Comptroller of Currency, was examined by Comptroller under this section. *Thompson v. Park Sav. Bank* (68 App. D. C. 272, 96 Fed. (2d) 544).

## PERSONAL LIABILITY OF DIRECTORS

Continuance of bank in business after expiration of charter—liability of directors personally for deposits. *Thompson v. Park Sav. Bank* (64 App. D. C. 308, 77 Fed. (2d) 955, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 104, cert. den. 305 U. S. 606, 83 L. Ed. 391, 59 Sup. Ct. 72).

## PLAN OF REORGANIZATION

Comptroller of Currency was acting within his statutory authority in holding that the plan of reorganization proposed by appellant was not fair and equitable as to the depositors and other creditors of the bank, and is not in the public interest, and that the Comptroller was right in refusing to adopt appellant's proposed plan, and consequently that his action in this behalf was not arbitrary or capricious. *Cooper v. Woodin* (63 App. D. C. 311, 72 Fed. (2d) 179).

§ 26-103 [5: 300]. Banking—Foreign corporations not to engage in—Approval of Comptroller of the Currency—"Branches" defined—Building associations—Dissolution of solvent banking corporations—Penalties.

(a) No banking business shall be done in the District of Columbia except by corporations organized in accordance with the provisions of this Code, as amended, or by national banking associations organized in accordance with the laws of the United States, except that this paragraph shall not apply to (1) corporations engaged in and doing a banking business on March 4, 1933, (2) individuals, partnerships, associations, or corporations primarily engaged as brokers in buying, selling, exchanging, and/or otherwise dealing in stocks, bonds, and/or other securities, for the account of others, and incidentally thereto conducts banking transactions, (3) individuals, partnerships, associations, or corporations not doing a bank-of-deposit business.

(b) No corporation shall engage in or do the business of a bank of deposit or a fiduciary business in the District of Columbia nor shall any branch be established to carry on any phase of such banking or fiduciary business in the District of Columbia until the approval and consent of the Comptroller of the Currency is secured. The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any place of business located in the District of Columbia, at which deposits are received, or checks paid, or

money lent, or at which the public is served or any phase of business conducted by the parent institution.

(c) No building association, incorporated or unincorporated, shall do a building-association business or maintain any office in the District of Columbia until it shall have secured the approval and consent of the Comptroller of the Currency; and the Comptroller of the Currency shall not give consent or approval to any building association to maintain any office or place of business in the District of Columbia, where such association is not incorporated under the laws of the District of Columbia in accordance with sections 26-401 to 26-416, except that this paragraph shall not apply to associations, incorporated or unincorporated, engaged in and doing a building-association business on March 4, 1933.

(d) Any solvent financial institution in the District of Columbia under the supervision of the Comptroller of the Currency may go into liquidation and discontinue business by the vote of its shareholders owning two-thirds of its stock. Whenever a vote is taken to go into liquidation it shall be the duty of the board of directors to cause notice of this fact to be certified, under the seal of the institution, by its president, secretary, or cashier to the Comptroller of the Currency, and publication thereof to be made for a period of two weeks in a newspaper published in the District of Columbia, that the institution has discontinued business and is winding up its affairs, and notifying its creditors to present claims against the institution for payment. The shareholders shall at the time of going into liquidation elect a committee or liquidating agent who shall liquidate the institution. No institution which has gone into voluntary liquidation shall be permitted to resume business but until its liquidation is complete shall remain a legal corporation or association for the purpose of suing or being sued. The liquidating agent shall give satisfactory surety bond to the board of directors of the institution and shall annually, on request of the Comptroller of the Currency, render such reports to the Comptroller as he shall require. Any such institution in liquidation may be examined by the Comptroller of the Currency who, if he finds such institution insolvent, may appoint a receiver and wind up its affairs in the same manner as provided by law for national banking associations.

(e) If any financial institution under the supervision of the Comptroller of the Currency, which has not gone into liquidation and for which a receiver has not already been appointed for other lawful cause, shall discontinue its operations for a period of sixty days, the Comptroller of the Currency may, if he deems it advisable, appoint a receiver for such institution.

(f) Any financial institution over which the Comptroller of the Currency has or had supervision which prior to March 4, 1933, had in any manner ceased to do a banking business shall not resume such banking business and shall advise the Comptroller of the Currency when its business has been fully liquidated, whereupon by operation of this section its charter is terminated. Such financial institution may in the discretion of the Comptroller of the Currency be subject to all the provisions of paragraph (d) of this section.



(g) Each person, copartnership, each director, liquidating committee or liquidating agent, and each one of the officers and employees of an association or corporation violating any of the provisions of this section shall be punished by a fine not exceeding \$1,000, or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court. (Apr. 26, 1922, 42 Stat. 500, ch. 147; Mar. 4, 1933, 47 Stat. 1564, ch. 274, § 1.)

#### AMENDMENT

As originally enacted this section provided: "That no corporation that is not now engaged in the business of banking in the District of Columbia shall, after the passage of this act, be permitted to enter upon said business in the said District, nor shall any corporation now or hereafter engaged in the business of banking be permitted to establish branch banks in said District, until after it shall have secured the approval and consent of the Comptroller of the Currency; and each one of the officers of such corporation so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the court."

#### CROSS REFERENCES

General provision concerning trust companies, § 26-301 et seq.

Suits, § 26-104.

See compiler's note to § 26-102.

#### NOTES TO DECISIONS

##### BANKS OPERATING PRIOR TO STATUTE

Bank incorporated under a state law operating a bank in the District of Columbia prior to April 26, 1922, was entitled to continue. (33 O. A. G. 395.)

##### STATE LAW DETERMINING LIABILITY

In absence of words creating liability claimed, or finding by necessary implication that the section plainly and convincingly adopts the national banking law of double liability, the law of Virginia as the place where bank was created would govern in measuring liability of appellees as stockholders. *Hamilton v. Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

§ 26-104 [5: 300a]. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of United States Code extended to District of Columbia—Shareholders' liability not applicable to new stock issues.

(b) The shareholders, on March 4, 1933, of every savings bank or savings company other than building associations organized under authority of any Act of Congress to do business in the District of Columbia, and of every banking institution organized by virtue of the laws of any of the states of this Union to do or doing a banking business in the District of Columbia, shall be held individually responsible, equally and ratably, and not one for another for all contracts, debts, and engagements of such savings bank, savings company, or banking institution, entered into or incurred subsequent to March 4, 1933, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. The words "entered into or incurred" as used in this section, shall be held to include any extension or renewal of any contracts, debt, and engagement renewed or extended after March 4, 1933. The additional liability imposed by this subsection upon the shareholders of the savings banks, savings companies, and banking institutions specified in this

subsection shall not apply with respect to shares in any such savings bank, savings company or banking institution issued after February 16, 1934.

(c) The provisions of U. S. Code, title 12, sections 55, 192, 193, 194, 198, 199, 200, 67, 191, 65, 197, and 62, are extended to apply to any bank, savings bank, or trust company organized, hereafter organized, or doing a banking business in the District of Columbia and to the shareholders of such institutions, except as limited by the provisions of paragraph (b) of this section: *Provided, however*, That the provisions of section 26-101 shall not be construed to be repealed by this section but shall have application to the banks, savings banks, savings companies, other than building associations, and trust companies embraced within this section.

(d) That portion of section 24 of the Judicial Code, as amended, applying to suits against national-banking associations (U. S. C., title 28, sec. 41, par. 16) shall be extended and shall apply to all actions arising under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1566, ch. 274, § 4; Feb. 16, 1934, 48 Stat. 352, ch. 14, § 2.)

#### COMPILER'S NOTE

This section originally contained a paragraph (a) which was repealed by the act of February 16, 1934 (48 Stat. 352, ch. 14, § 1). It provided as follows: "The shareholders of every savings bank or savings company other than building associations now or hereafter organized under authority of any Act of Congress to do business in the District of Columbia and of every banking institution organized by virtue of the laws of any of the States of the Union to do or doing a banking business in the District of Columbia, who acquire in any manner the shares of any such savings bank or savings company or such banking institutions other than building associations after the enactment of this Act, shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank or company, to the extent of the amount of their stock so acquired therein, at the par value thereof in addition to the amount invested in such shares."

#### AMENDMENT

The last sentence of subsection (b) was added by the 1934 amendment which repealed the former subsection (a). See compiler's note.

#### CROSS REFERENCES

Stockholder's liability in trust, loan, mortgage, safe deposit, and title corporations, § 26-322.

See compiler's note to section 26-102.

#### NOTES TO DECISIONS

##### FOREIGN BANK DOING BUSINESS IN DISTRICT

When there was, at the time, no statute in the District creating double liability in the case of a stockholder of a foreign bank doing business exclusively in the District, the liability of the stockholder is determined by the charter of incorporation and laws of the State in which incorporation is had. *Hamilton v. Bergling* (66 App. D. C. 83, 85 Fed. (2d) 249).

§ 26-105. Shareholders' liability terminated after July 1, 1937—Conditions.

The additional liability imposed by section 26-104 upon the shareholders of savings banks, savings companies, and banking institutions and the additional liability imposed by section 26-322 upon the shareholders of trust companies, shall cease to apply on July 1, 1937, with respect to such savings banks, savings companies, banking institutions, and trust companies which shall be transacting business on



such date: *Provided*, That not less than six months prior to such date, the savings bank, savings company, banking institution or trust company, desiring to take advantage hereof, shall have caused notice of such prospective termination of liability to be published in a newspaper published in the District of Columbia and having general circulation therein. In the event of failure to give such notice as and when above provided, a termination of such additional liability may thereafter be accomplished as of the date six months subsequent to publication in the manner above provided. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

## CROSS REFERENCE

General provisions concerning trust companies, § 26-301 et seq.

## § 26-106. Dividends—Payment—Restrictions.

Each such savings bank, savings company, banking institution, and trust company shall, before the declaration of a dividend on its shares of common stock, carry not less than one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall equal the amount of its common stock: *Provided*, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock or debentures of any such savings bank, savings company, banking institution, or trust company, out of its net earnings for such half-year period shall be deemed to be an addition to its surplus if, upon the retirement of such preferred stock or debentures, the amount so paid into such retirement fund for such period may then properly be carried to surplus. In any such case the savings bank, savings company, banking institution, or trust company shall be obligated to transfer to surplus the amount so paid into such retirement fund for such period, on account of the preferred stock or debentures as such stock or debentures are retired. (Aug. 23, 1935, 49 Stat. 720, ch. 614, § 337.)

## CROSS REFERENCE

General provisions for trust companies, § 26-301 et seq.

## § 26-107 [5:300b]. Restriction on use of words "bank" and "trust company"—Penalty.

No corporation, association, partnership, or individual shall carry on any business in the District of Columbia under any name or title containing the word "bank" or the words "trust company" unless (1) the business is being carried on under the name or title on March 4, 1933, or (2) the business is carried on under the supervision of the Comptroller of the Currency and the name or title is approved by the Comptroller of the Currency. Any individual who, or corporation, association, or partnership which, violates any of the provisions of this section, and any officer of any such corporation or association and any officer or member of any such partnership, who assents to any such violation, shall, upon conviction thereof, be fined not more than \$5,000. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 6.)

## CROSS REFERENCES

General provisions concerning trust companies, § 26-301 et seq.

Suits, § 26-104.

See compiler's note to § 26-102.

## § 26-108 [5:300c]. False statements against banking institutions—Penalty—Defense.

Any person who maliciously makes or repeats to, or in the hearing of, or under such circumstances that it becomes known to, any other person any false statement imputing insolvency or unsound financial condition to any bank, trust company, or building and loan association in the District of Columbia, or tending to cause a general withdrawal of deposits or funds from any such institution, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than five years, or both: *Provided*, That the truth of said statement, established by the maker thereof, shall be a complete defense in any prosecution under the provisions of this section. (Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 7.)

## CROSS REFERENCES

General provisions concerning trust companies, § 26-301 et seq.

Suits, § 26-104.

See compiler's note to § 26-102.

## § 26-109 [5:300d]. Certain limitations on member banks of Federal Reserve System extended to nonmembers.

All acts prohibited by the provisions of sections 503, 591, and 592, Title 12, U. S. Code, in the case of Federal Reserve Banks or member banks thereof, or of directors, officers, or employees of such banks, are likewise prohibited, respectively, in the case of banks in the District of Columbia which are not members of a Federal reserve bank, or of directors, officers, or employees of such banks, and shall be punishable by the respective penalties provided in such section. (Mar. 4, 1933, 47 Stat. 1568, ch. 274, § 8.)

## CROSS REFERENCES

Suits, § 26-104.

See compiler's note to § 26-102.

## § 26-110 [5:304]. Authority of notaries public employed by bank or trust company.

It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank, trust company, or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment drafts, checks, notes, acceptances, or other negotiable instruments which may be owned or held for collection by such corporation: *Provided*, That it shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary is individually a party to such instrument: *Provided further*, That it shall be unlawful for any notary public to take the oath of an officer or director of any bank or trust company of which he is an officer, or to take an oath of any person verifying a report of



such bank or trust company to the Comptroller of the Currency. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 5.)

#### CROSS REFERENCE

General provisions concerning trust companies, § 26-301 et seq.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

Although a notary is a stockholder of a bank and its president, protest of notes by him is not invalid. *Roberts v. International Bank* (58 App. D. C. 87, 25 Fed. (2d) 214).

### Chapter 2.—JOINT ACCOUNTS—ADVERSE CLAIMANTS—TRUST ACCOUNTS

#### Sec.

- 26-201. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.
- 26-202. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.
- 26-203. Notice of adverse claim to deposit.
- 26-204. Payment of trust accounts on death of trustee.

§ 26-201 [19: 1]. Deposits or shares of stock in names of two or more persons—Payments—Liability of bank.

When a deposit shall have been made in, or shall after May 15, 1928, be made in, or any collection item shall have been placed or shall after May 15, 1928, be placed with, any bank, trust company, savings bank, building association, or other banking institution, including national banks, transacting business in the District of Columbia, or when any shares of stock shall have been issued or shall after May 15, 1928, be issued by any building association, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, payable to either, or payable to either or the survivor or survivors, such deposit, or in any part thereof, or any interest or dividend thereon, and such collection item or its proceeds, or any interest or dividend thereon, or such shares of stock issued by a building association or any interest or dividend thereon, may be paid or delivered to either of said persons whether the other or others be living or not; and the receipt or acquittance of the person to whom such payment or delivery is made shall be a valid, sufficient, and complete release and discharge of the bank, trust company, savings bank, building association, or other banking institution, including national banks, for any payment or delivery so made. (May 15, 1928, 45 Stat. 533, ch. 568, § 1.)

#### CROSS REFERENCE

Uniform Fiduciary Act, § 28-2301 et seq.

§ 26-202 [19: 2]. Safe deposit boxes in names of two or more persons—Right of access—Liability of bank.

When a safety deposit box or vault shall have been hired from any bank, trust company, savings bank, building association, or other banking institution, including national banks, or any other corporation, transacting business in the District of Columbia, in the names of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said persons, or property is held for safe-keeping by any such bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, for two

or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either or the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safety deposit box or vault and to remove the contents thereof, or any part of such contents, or to have delivered to him or them, the property so held for safe-keeping, or any part thereof, and in case of such removal or delivery the said bank, trust company, savings bank, building association, or other corporation or banking institution, including national banks, shall be exempt from any liability for permitting such access or removal or for the delivery to such person or persons. (May 15, 1928, 45 Stat. 534, ch. 568, § 2.)

§ 26-203 [19: 3]. Notice of adverse claim to deposit.

Notice to any bank or trust company doing business in the District of Columbia of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank or trust company to recognize said adverse claimant unless said adverse claimant shall also either (1) procure a restraining order, injunction, or other appropriate process against said bank or trust company from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons; or (2) execute to such bank or trust company, in form and with sureties acceptable to it, a bond indemnifying said bank or trust company from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or trust company: *Provided*, That this section shall not apply to any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, together with the facts showing reasonable cause of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 2.)

§ 26-204 [19: 4]. Payment of trust accounts on death of trustee.

Whenever a deposit, which is in form in trust for another, shall be made by any person in any bank or trust company doing business in the District of Columbia, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank or trust company, such deposit, or any part thereof, together with the dividends, or interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit was made or to his legal representative. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 4.)

### Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

#### Sec.

- 26-301. Purposes for which formed.
- 26-302. Title insurance companies may become perpetual.
- 26-303. Trust companies to have perpetual succession.



Sec.

- 26-304. Organization certificate—Content.
- 26-305. Commissioners of the District may grant or refuse charter.
- 26-306. Notice of application to Commissioners.
- 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.
- 26-308. Reports to Comptroller—Powers of Comptroller.
- 26-309. Powers of companies—Liability as trustee.
- 26-310. May be appointed trustee, receiver, administrator, collector, guardian, or committee.
- 26-311. Oath as fiduciary.
- 26-312. Stock to be security when fiduciary.
- 26-313. Existing companies.
- 26-314. Real estate which may be owned.
- 26-315. Duration of charter.
- 26-316. Capital stock—Deposit with Comptroller required.
- 26-317. Shares, par value—Calls—Sale of stock upon failure to pay call.
- 26-318. Annual reports to Comptroller.
- 26-319. Liability of directors or trustees—Exception.
- 26-320. False swearing—Misappropriation made larceny.
- 26-321. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.
- 26-322. Liability of stockholders.
- 26-323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.
- 26-324. Number of directors or trustees—Election—Tenure.
- 26-325. Officers—Bond.
- 26-326. By-laws.
- 26-327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.
- 26-328. Directors or trustees objecting to such dividends and filing certificate, exempt.
- 26-329. Directors or trustees personally liable when liabilities exceed assets.
- 26-330. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.
- 26-331. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.
- 26-332. Copy of certificate to be evidence.
- 26-333. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.
- 26-334. Bond as fiduciary may be required—Examination for cause.
- 26-335. Compliance required of corporations organized under State laws—Penalty.
- 26-336. Right to amend or repeal reserved to Congress.

#### § 26-301 [5: 341]. Purposes for which formed.

Corporations may be formed within the District of Columbia for the purposes hereinafter mentioned in the following manner:

Any number of natural persons, citizens of the United States, not less than twenty-five, may associate themselves together to form a company for the purpose of carrying on, in the District of Columbia, any one of the three classes of business herein specified, to wit:

First. A safe deposit, trust, loan, and mortgage business.

Second. A title insurance, loan, and mortgage business.

Third. A security, guarantee, indemnity, loan, and mortgage business: *Provided*, That the capital stock of any of said companies shall not be less than one million dollars, and that any of said companies may also do a storage business when their capital stock amounts to the sum of not less than one million two hundred thousand dollars. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 715.)

#### COMPILER'S NOTE

The act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 2 (a)), provided, in part, as follows: "So much of the act approved October 1, 1890, entitled, 'An Act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby repealed." See § 47-1701 and notes.

#### CROSS REFERENCES

- Amendment of charter, § 29-238.
- Excise and license taxes, § 47-1701 et seq.
- Exempted from operation of Money Lenders Law, § 26-610.
- Existing corporation may avail itself of the provisions of this chapter, § 26-313.
- Provisions applicable to trust and fiduciary companies, §§ 26-101 to 26-110.
- Special powers of companies organized hereunder, § 26-309.
- Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, § 35-1302.

#### NOTES TO DECISIONS

##### IN GENERAL

Language of the act of incorporation "liable to the creditors" does not create an independent and direct property right of creditors enforceable only by them in an equity suit, but it is a right which, though created for their benefit, accrues to the Comptroller and through him to his receiver, by whom alone it is enforceable in the administration of the trust estate. *Dunn v. O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

§ 26-302 [5: 342]. Title insurance companies may become perpetual.

Any company formed prior to January 1, 1902, agreeably to law, for the purpose of insuring titles to real estate may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

§ 26-303 [5: 342a]. Trust companies to have perpetual succession.

Any company transacting the business of a trust company and heretofore or hereafter organized or operating under the provisions of this title shall have perpetual succession from the date of its organization, or until such time as it be dissolved, or until its franchise shall become forfeited by reason of violation of law, or until terminated by either a general or special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him. (Mar. 3, 1901, ch. 854, § 641, as added June 24, 1936, 49 Stat. 1898, ch. 743.)

#### CROSS REFERENCE

Voluntary liquidation and discontinuance of business, § 26-103.

§ 26-304 [5: 343]. Organization certificate—Content.

The persons referred to in section 26-301 shall, under their hands and seals, execute before some officer in said District competent to take the acknowledgment of deeds, an organization certificate, which shall specifically state—

First. The name of the corporation.

Second. The purposes for which it is formed.

Third. The term for which it is to exist, which shall not exceed the term of fifty years, and be sub-



ject to alteration, amendment, or repeal by Congress at any time.

Fourth. The number of its directors and the names and residences of the officers who for the first year are to manage the affairs of the company.

Fifth. The amount of its capital stock and its subdivision into shares. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 716.)

#### CROSS REFERENCE

No corporation may use the words "trust company" unless operated under supervision of Comptroller of the Currency, § 26-107.

§ 26-305 [5:344]. Commissioners of the District may grant or refuse charter.

This certificate shall be presented to the Commissioners of the District, who shall have power and discretion to grant or refuse to said persons a charter of incorporation upon the terms set forth in the said certificate and the provisions of this title. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 717.)

#### CROSS REFERENCE

Power of Comptroller of the Currency over trust companies, § 26-101 et seq.

§ 26-306 [5:345]. Notice of application to Commissioners.

Previous to the presentation of the said certificate to the said Commissioners, notice of the intention to apply for such charter shall be inserted in two newspapers of general circulation, printed in the District of Columbia, at least four times a week for three weeks, setting forth briefly the name of the proposed company, its character and object, the names of the proposed corporators, and the intention to make application for a charter on a specified day; and the proof of such publication shall be presented with said certificate when presentation thereof is made to said Commissioners. (Mar. 3, 1901, 31 Stat. 1303, ch. 854, § 718.)

§ 26-307 [5:346]. Recording charter—Certificate to be secured from Comptroller of Currency.

If the charter be granted as aforesaid, it, together with the certificate of the commissioners granting the same indorsed thereon, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. On the filing of the said certificate with the said recorder of deeds as herein provided, approved as aforesaid by the said commissioners, the persons named therein and their successors shall thereupon and thereby be and become a body corporate and politic, and as such shall be vested with all the powers and charged with all the liabilities conferred upon and imposed by this title upon companies organized under the provisions hereof: *Provided, however*, That no corporation created and organized under the provisions hereof, or availing itself of the provisions hereof as contained in section 26-313, shall be authorized to transact the business of a trust company, or any business of a fiduciary character, until it shall have filed with the Comptroller of the Currency a copy of its certificate of organization and charter, and shall have obtained from him and filed the same for record with the said recorder of deeds, a certificate that the

said capital stock of said company has been paid in and the deposit of securities made with said comptroller in the manner and to the extent required by this title. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 719.)

#### CROSS REFERENCE

Power of Comptroller over trust companies, § 26-101 et seq.

§ 26-308 [5:347]. Reports to Comptroller—Powers of Comptroller.

All companies organized under this title, or which shall, under the provisions hereof, become entitled to transact the business of a trust company, shall report to the Comptroller of the Currency in the manner prescribed by U. S. C., title 12, sections 161, 163, 164, in the case of national banks, and all acts amendatory thereof or supplementary thereto, and with similar provisions for compensating examiners, and shall be subject to like penalties for failure to do so. The comptroller shall have and exercise the same visitatorial powers over the affairs of the said corporations as is conferred upon him by U. S. C., title 12, sections 481-485, in the case of national banks. He shall also have power, when in his opinion it is necessary, to take possession of any such company for the reasons and in the manner and to the same extent as are provided in the laws of the United States with respect to national banks. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 720.)

#### CROSS REFERENCE

Other provisions concerning powers of Comptroller over trust companies, § 26-101 et seq.

### NOTES TO DECISIONS

#### IN GENERAL

Purpose of this section is to make trust companies and State incorporated banks doing business in the District subject to the authority of the Comptroller both in operation and insolvency. *Dunn v. O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

#### REAL ESTATE

Virginia real estate owned by insolvent trust company of the District, being administered by the Comptroller of the Currency is subject to attachment in Virginia court by Virginia creditors. *Loudoun Nat. Bank v. Continental Trust Co.* (164 Va. 536, 180 S. E. 548).

§ 26-309 [5:348]. Powers of companies—Liability as trustee.

All companies organized under this title are hereby declared to be corporations possessed of the powers and functions of corporations generally, and shall have power—

First. To make contracts.

Second. To sue and be sued, plead and be impleaded, in any court as fully as natural persons.

Third. To make and use a common seal and alter the same at pleasure.

Fourth. To loan money.

Fifth. When organized under subdivision 1 of section 26-301, to accept and execute trusts of any and every description which may be committed or transferred to them, and to accept the office and perform the duties of receiver, assignee, executor, administrator, collector of estate or property of any decedent, guardian of the estate of minors with the consent of the guardian of the person of such minor, and committee of the estates of lunatics and



idiots whenever any trusteeship or any such office or appointment is committed or transferred to them, with their consent, by any person, body politic or corporate, or by any court in the District of Columbia; and all such companies organized under the first subdivision of section 26-301 are further authorized to accept deposits of money for the purposes designated herein, upon such terms as may be agreed upon from time to time with depositors, and to act as agent for the purpose of issuing or countersigning the bonds or obligations of any corporation, association, municipality, or state, or other public authority, and to receive and manage any sinking fund on any such terms as may be agreed upon, and shall have power to issue its debenture bonds upon deeds of trust or mortgages of real estate to a sum not exceeding the face value of said deeds of trust or mortgages, and which shall not exceed fifty per centum of the fair cash value of the real estate covered by said deeds or mortgages, to be ascertained by the Comptroller of the Currency; but no debenture bonds shall be issued until the securities on which the same are based have been placed in the actual possession of the trustee named in the debenture bonds, who shall hold said securities until all of said bonds are paid; and when organized under the second subdivision of section 26-301 said company is authorized to insure titles to real estate and to transact generally the business mentioned in said subdivision; and when organized under the third subdivision of section 26-301 said company is hereby authorized, in addition to the loan and mortgage business therein mentioned, to secure, guarantee, and insure individuals, bodies politic, associations, and corporations against loss by or through trustees, agents, servants, or employees, and to guarantee the faithful performance of contracts and obligations of whatever kind entered into by or on the part of any person or persons, association, corporation, or corporations, and against loss of every kind: *Provided*, That any corporations formed under the provisions of this chapter when acting as trustee shall be liable to account for the amounts actually earned by the moneys held by it in trust in addition to the principal so held; but such corporation may be allowed a reasonable compensation for services performed in the care of the trust estate. (Mar. 3, 1901, 31 Stat. 1304, ch. 854, § 721.)

## CROSS REFERENCES

- Bylaws, § 26-326.
- Conveyances of real estate, formal requisites, § 45-302.
- False statements against trust companies, § 26-108.
- Insurance companies authorized to write title insurance, § 35-1103.
- Liability as forwarding agent, § 28-1010.
- Mistake or error in paying instruments, damages, § 28-1009.
- Number and powers of trustees or directors, § 26-324.
- Other provisions concerning power of Comptroller over trust companies, § 26-101 et seq.
- Payment of checks or other instruments more than a year after date, § 28-1004.
- Payment of forged or altered instrument, § 28-1008.
- Trust or joint deposits, accounts, or safety deposit boxes, § 26-201 et seq.
- See notes to § 26-301.
- See note to § 26-308. *Loudoun Nat. Bank v. Continental Trust Co.* (164 Va. 536, 180 S. E. 548).

§ 26-310 [5: 349]. May be appointed trustee, receiver, administrator, collector, guardian, or committee.

In all cases in which application shall be made to any court in the District of Columbia, or wherever it becomes necessary or proper for said court to appoint a trustee, receiver, administrator, collector, guardian of the estate of a minor, or committee of the estate of a lunatic, it shall and may be lawful for said court (but without prejudice to any preference in the order of any such appointments required by law) to appoint any such company organized under the first subdivision of section 26-301, with its assent, such trustee, receiver, administrator, collector, committee, or guardian, with the consent of the guardian of the person of such minor: *Provided, however*, That no court or judge who is an owner of or in any manner financially interested in the stock or business of such corporation shall commit by order or decree to any such corporation any trust or fiduciary duty. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 722.)

§ 26-311 [5: 350]. Oath as fiduciary.

Whenever any corporation operating under this Code shall be appointed such trustee, executor, administrator, collector, receiver, assignee, guardian, or committee, as aforesaid, the president, vice-president, secretary, or treasurer of said company shall take the oath or affirmation required by law to be made by any trustee, executor, administrator, collector, receiver, assignee, guardian, or committee. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 723.)

§ 26-312 [5: 351]. Stock to be security when fiduciary.

When any court shall appoint the said company a trustee, receiver, administrator, collector, or such guardian or committee, or shall order the deposit of money or other valuable with said company, or where any individual or corporation shall appoint any of said companies a trustee, executor, assignee, or such guardian, the capital stock of said company subscribed for or taken, and all property owned by said company, together with the liability of the stockholders and officers as herein provided, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever. (Mar. 3, 1901, 31 Stat. 1305, ch. 854, § 724.)

§ 26-313 [5: 352]. Existing companies.

Any safe-deposit company, trust company, surety or guaranty company, or title insurance company incorporated on or before January 1, 1902, and operating under the laws of the United States in the District of Columbia or of any of the States, and doing business in said District on or before January 1, 1902, may avail itself of the provisions of this chapter on filing in the office of the recorder of deeds of the District of Columbia, or with the Comptroller of the Currency, a certificate of its intention to do so, which certificate shall specify which one of the three classes of business set out in section 26-301 it will carry on, and shall be verified by the oath of its president to the effect that it has in every respect complied with the requirements of existing law, especially with the provisions of this chapter, that its



capital stock is paid in as provided in section 26-323 and is not impaired; and thereafter such company may exercise all powers and perform all duties authorized by any one of the subdivisions of section 26-301 in addition to the powers lawfully exercised by such company on January 1, 1902. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 725.)

#### NOTES TO DECISIONS

##### STATE BANK OPERATING IN DISTRICT

Comptroller has the same control and management of an insolvent State bank operating in the District as in the case of national banks. It likewise includes all provisions for the collection of debts and the distribution of assets, and as well the enforcement of the liability of stockholders. *Hamilton v. Ofutt* (64 App. D. C. 385, 78 Fed. (2d) 735).

§ 26-314 [5: 353]. Real estate which may be owned.

Any company operating under this chapter may lease, purchase, hold, and convey real property in which the offices of the company are located not to exceed in value the capital and surplus of the company, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages. But no such association shall hold the possession of any real estate under foreclosure of mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 726; Apr. 19, 1920, 41 Stat. 566, ch. 153.)

##### AMENDMENT

The 1920 act struck out § 726 of the 1901 act and inserted the above section in lieu thereof. The first sentence formerly provided that "Any company operating under this subchapter may lease, purchase, hold, and convey real estate, not exceeding in value five hundred thousand dollars, and such in addition as it may acquire in satisfaction of debts due the corporation under sales, decrees, judgments, and mortgages."

§ 26-315 [5: 354]. Duration of charter.

The charters for incorporations named in this chapter may be made perpetual, or may be limited in time by their provisions, subject to the approval of Congress. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 727.)

##### CROSS REFERENCES

Title insurance companies perpetual, § 26-302.  
Trust companies perpetual, § 26-303.

§ 26-316 [5: 355]. Capital stock—Deposit with Comptroller required.

The capital stock of every such company shall be at least one million dollars, and at least fifty per centum thereof must have been paid in, in cash or by the transfer of assets as hereinafter provided in section 26-323 of this chapter, before any such company shall be entitled to transact business as a corporation, except with its own members, and before any company organized hereunder shall be entitled to transact the business of a trust company, or to become and act as an administrator, executor, guardian of the estate of a minor, or undertake any other kindred fiduciary duty, it shall deposit, either in money or in bonds, mortgages, deeds of trust, or other securities equal in actual value to

one-fourth of the capital stock paid in, with the Comptroller of the Currency, to be kept by him upon the trust and for the purposes hereinafter provided; and the said comptroller may from time to time require an additional deposit from any such company, to be held upon and for the same trust and purposes, not exceeding, however, in value one-half the paid-in capital stock; and the said comptroller shall not issue to any corporation the certificate heretofore provided for until said deposit with him of securities required by this section. Within one year after the organization of any corporation under the provisions of this chapter, or after any corporation existing prior to January 1, 1902, shall have availed itself of the powers and rights given by this chapter in the manner herein provided for, its entire capital stock shall have been paid in. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 728.)

##### CROSS REFERENCE

Increase or decrease of capital stock, § 26-331.

§ 26-317 [5: 356]. Shares, par value—Calls—Sale of stock upon failure to pay call.

The capital stock of every such company shall be divided into shares of one hundred dollars each, or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof. It shall be lawful for such company to call for and demand from the stockholders, respectively, all sums of money by them subscribed, at such time and in such proportions as its board of directors shall deem proper, within the time specified in section 26-316, and it may enforce payment by all remedies provided by law; and if any stockholder shall refuse or neglect to pay any instalment, as required by a resolution of the board of directors, after thirty days' notice of the same, the said board of directors may sell at public auction to the highest bidder so many shares of said stock as shall pay said instalment, under such general regulations as may be adopted in the by-laws of said company, and the highest bidder shall be taken to be the person who offers to purchase the least number of shares for the assessment due. (Mar. 3, 1901, 31 Stat. 1306, ch. 854, § 729; June 20, 1938, 52 Stat. 780, ch. 527.)

##### AMENDMENT

The 1938 act added to the first sentence the words "or into shares of such less amount as may be provided in the certificate of incorporation or amendment thereof."

§ 26-318 [5: 357]. Annual reports to Comptroller.

Every such company shall annually, within twenty days after the 1st of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December 31st then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 730; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5.)



## AMENDMENT

In view of the concluding sentence of paragraph 5 of § 6 of the 1902 act, the following words, contained in the original enactment after the present last word "trustees," were deleted: "and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

## CROSS REFERENCE

Other provisions concerning powers and duties of Comptroller, § 26-101 et seq.

## CITED

*American Security & Trust Co. v. District of Columbia* (29 App. D. C. 265).

### § 26-319 [5:358]. Liability of directors or trustees—Exception.

If any company fails to comply with the provisions of section 26-318, all the directors or trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made: *Provided*, That in case of failure of the company in any year to comply with the provisions of section 26-318, and any of the directors shall, on or before January 15th of such year, file his written request for such compliance with the secretary of the company, the Comptroller of the Currency, and the recorder of deeds of the District of Columbia, such director shall be exempt from the liability prescribed in this section. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 731.)

### § 26-320 [5:359]. False swearing—Misappropriation made larceny.

Any wilful false swearing in regard to any certificate or report or public notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any of the money of any corporation or company formed under this chapter, or of any money, funds, or property intrusted to it, shall be held to be larceny, and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 732.)

## COMPILER'S NOTE

The word "chapter" refers to the 1901 act of which this section is a part and which was the 1901 Code. As this is a criminal provision, it would probably be strictly construed to include only the sections of this title which, as they stand or as they have been amended, were contained in the said 1901 act (Code). These would be as follows: §§ 26-101, 26-102, 26-301 to 26-336, 26-401 to 26-415. The acts of Congress which are §§ 26-103 to 26-110 and 26-501 to 26-518 appear to be independent legislation, not purporting to amend the 1901 act (Code). Note also a similar provision in the act of March 4, 1909, 35 Stat. 1058, ch. 303 (§ 26-404) which purports to amend the 1901 act (Code).

### § 26-321 [5:360]. Stock deemed personal estate of holder—Transfer—Face to show par value, amount paid.

The stock of such company shall be deemed personal estate, and shall be transferable only on the books of such company in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls

thereon shall have been fully paid. All certificates of the stock of any company organized under this title shall show upon their face the par value of each share and the amount paid thereon. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 733; July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5.)

## AMENDMENT

As enacted, the first sentence of this section was continued as follows: "and the said stock shall not be taxable in the hands of individual owners, the tax on the gross earnings of the company hereinbefore provided being in lieu of other personal tax." This has been deleted as repealed in view of paragraph 5 of § 6 of the 1902 act. See also amendment note to § 26-318 for deletion of provision for tax on gross earnings as provided by 1901 act.

### § 26-322 [5:361]. Liability of stockholders.

All stockholders of every company incorporated under this chapter, or availing itself of its provisions under section 26-313 shall be severally and individually liable to the creditors of such company to an amount equal to and in addition to the amount of stock held by them respectively for all debts and contracts made by such company. (Mar. 3, 1901, 31 Stat. 1307, ch. 854, § 734.)

## CROSS REFERENCES

Other provisions concerning liabilities of stockholders, §§ 26-104 to 26-106.

Suits, § 26-104.

Termination of liability, § 26-105.

## NOTES TO DECISIONS

## DETERMINATION OF LIABILITY

Liability of a stockholder is determined by the charter of incorporation and the laws of the State in which incorporation is had, and no liability will be read into statute where none exists. *Hamilton v. Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121).

## DOUBLE LIABILITY

Taking possession of District bank by Comptroller does not impose double liability on stockholders unless State does. *Hamilton v. Offutt* (64 App. D. C. 385, 78 Fed. (2d) 735, cert. den. 296 U. S. 592, 80 L. Ed. 419, 56 Sup. Ct. 121).

Double liability is no more the asset of the corporation than the double liability created by the District statute with relation to trust companies. In either case it is an asset of creditors and not of the corporation. *Dunn v. O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

### § 26-323 [5:362]. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.

Nothing but money shall be considered as payment of any part of the capital stock, except that in the case of any company doing business on January 1, 1902, in the District of Columbia in any of the classes herein provided for, or under any act of Congress, or by virtue of the laws of any of the States, and which company had on that date actually received full payment in money of at least fifty per centum of the capital stock required by this chapter, and which company desires to obtain a charter under this chapter, all the assets or property may be received and considered as money at a value to be appraised and fixed by the Comptroller of the Currency: *Provided*, That all such assets and property are also transferred to and are thereafter owned by the company organized under this chapter. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 735.)



**§ 26-324 [5: 363]. Number of directors or trustees—Election—Tenure.**

The stock, property, and concerns of such company shall be managed by not less than nine nor more than thirty directors or trustees, who shall, respectively, be stockholders, and at least one-half residents and citizens of the District of Columbia, and shall, except the first year, be annually elected by the stockholders at such time and place and after such published notice as shall be determined by the by-laws of the company, and said directors or trustees shall hold until their successors are elected and qualified. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 736.)

**§ 26-325 [5: 364]. Officers—Bond.**

There shall be a president of the company, who shall be a director, also a secretary and a treasurer, all of whom shall be chosen by the directors or trustees: *Provided*, That only one of the above-named offices shall be held by the same person at the same time. Subordinate officers may be appointed by the directors or trustees, and all such officers may be required to give such security for the faithful performance of the duties of their offices as the directors or trustees may require. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 737.)

**CROSS REFERENCE**

Limitations on powers of notary public employed by trust company, § 26-110.

**§ 26-326 [5: 365]. By-laws.**

The directors or trustees shall have power to make such by-laws as they deem proper for the management or disposal of the stock and business affairs of such company, not inconsistent with the provisions of this title, and prescribing the duties of officers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 738.)

**§ 26-327 [5: 366]. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.**

If the directors or trustees of any company shall declare or pay any dividend the payment of which would render it insolvent, or which would create a debt against such company, they shall be jointly and severally liable as guarantors for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall, respectively, remain in office. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 739.)

**CROSS REFERENCE**

Other provisions for restrictions upon payment of dividends, § 26-106.

**§ 26-328 [5: 367]. Directors or trustees objecting to such dividends and filing certificate, exempt.**

If any of the directors or trustees shall object to declaring such dividends or the payment of the same, and shall at any time before the time fixed for the payment thereof file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in section 26-327. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 740.)

**§ 26-329 [5: 368]. Directors or trustees personally liable when liabilities exceed assets.**

If the liabilities of any company shall at any time exceed the amount of the fair cash value of the assets, the directors or trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of the company, after the additional liability of the stockholders has been enforced. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 741.)

**§ 26-330 [5: 369]. Executors, administrators, guardians, or trustees not liable as stockholder—Estate liable.**

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or the person interested in such trust fund would have been if he had been living and competent to act and hold the stock in his own name. (Mar. 3, 1901, 31 Stat. 1308, ch. 854, § 742.)

**§ 26-331 [5: 370]. Increase or decrease of capital stock—Approval by Comptroller—Distribution of assets.**

Any corporation which may be formed under this chapter may increase its capital stock by complying with the provisions of this chapter to any amount which may be deemed sufficient and proper for the purposes of the corporation.

Any company transacting the business of a trust company heretofore or after June 20, 1938, organized or operating under the provisions of this subchapter may by the vote of shareholders owning two-thirds of its capital stock reduce its capital to any sum not below the amount required by this chapter; but no such reduction shall be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and such reduction has been approved by said Comptroller of the Currency, and no shareholder shall be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any such corporation unless such distribution shall have been approved by the Comptroller of the Currency and by the affirmative vote of at least two-thirds of the shares of stock outstanding. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 743; June 20, 1938, 52 Stat. 780, ch. 527.)

**AMENDMENT**

The 1938 amendment added the second paragraph of this section.

**CROSS REFERENCES**

Capital stock, § 26-316.

Other provisions concerning trust companies, § 26-101 et seq.

**§ 26-332 [5: 371]. Copy of certificate to be evidence.**

A copy of any certificate of incorporation filed in pursuance of this title, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 744.)



§ 26-333 [5: 372]. No bond to be required when company appointed fiduciary—Capital stock and property to be considered as security for performance of duties.

No bond or other collateral security, except as hereinafter stated, shall be required from any trust company incorporated under this title for and in respect to any trust, nor when appointed trustee, guardian, receiver, executor, or administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or other fiduciary appointment; but the capital stock subscribed for or taken, and all property owned by said company and the amount for which said stockholders shall be liable in excess of their stock, shall be taken and considered as the security required by law for the faithful performance of its duties, and shall be absolutely liable in case of any default whatever; and in case of the insolvency or dissolution of said company, the debts due from the said company as trustee, guardian, receiver, executor, administrator, collector, or committee of the estate of lunatics, idiots, or any other fiduciary appointment shall have a preference. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 745.)

§ 26-334 [5: 373]. Bond as fiduciary may be required—Examination for cause.

The District Court of the United States for the District of Columbia, or any justice thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any justice thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any justice thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any justice thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746.)

§ 26-335 [5: 374]. Compliance required of corporations organized under State laws—Penalty.

No corporation or company organized by virtue of the laws of any of the States of this Union shall carry on in the District of Columbia any of the kinds of business named in this chapter without strict compliance in all particulars with the provisions of this chapter for the government of such corporations formed under it, and each one of the officers of the corporation or company so offending shall be punished by a fine not exceeding \$1,000 or imprisonment not exceeding one year, or by both fine and impris-

onment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 747; Mar. 4, 1933, 47 Stat. 1567, ch. 274, § 5.)

#### AMENDMENT

The 1933 amendment omitted the words "and having its principal place of business within the District of Columbia" following "States of this Union" in the first sentence.

#### CROSS REFERENCES

Semiannual publication of financial statement, § 29-105. Suits, § 26-104.  
See compiler's note to § 26-102.

§ 26-336 [5: 375]. Right to amend or repeal reserved to Congress.

Congress may at any time alter, amend, or repeal this chapter, but any such amendment or repeal shall not, nor shall the dissolution of any company formed under this chapter, take away or impair any remedy given against such corporation, its stockholders, or officers for any liability or penalty which shall have been previously incurred. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 748.)

### Chapter 4.—BUILDING ASSOCIATIONS

- Sec.
- 26-401. Organization—Certificate—Created body politic and corporate—Powers.
- 26-402. Powers as to stock.
- 26-403. Bonus to be paid by late subscribers.
- 26-404. Object—Powers of Comptroller of the Currency—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.
- 26-405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.
- 26-406. Advancements.
- 26-407. Security for advancement.
- 26-408. Profits.
- 26-409. Redemption of shares.
- 26-410. Withdrawal by shareholder.
- 26-411. Repayment of advances.
- 26-412. Forfeiture.
- 26-413. Foreclosure.
- 26-414. Investment of funds in real estate.
- 26-415. Purchase of Home Owners' Loan Corporation bonds authorized.
- 26-416. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

§ 26-401 [5: 41]. Organization—Certificate—Created body politic and corporate—Powers.

Any five or more persons who desire to form an incorporated building or homestead association, all being citizens of the United States, and a majority of them residents of the District of Columbia, may make, sign, seal, and acknowledge, before some officer authorized to take the acknowledgment of deeds, and file for record in the office of the recorder of deeds, a certificate, in writing, to the same effect as that required in sections 29-201 to 29-240 for the formation of the corporations therein mentioned.

When such certificate shall have been filed for record as aforesaid, the persons who have signed and acknowledged the same, and their successors, shall become and be a body politic and corporate, in fact and in law, by the name stated in the certificate, and by that name have succession and be capable of suing and being sued in the courts of the District, and



of purchasing, holding, and conveying such real estate as may be necessary to the conduct of its business, and to make reasonable by-laws not inconsistent herewith. (Mar. 3, 1901, 31 Stat. 1298, 1299, ch. 854, §§ 687, 688.)

#### CROSS REFERENCES

Approval of Comptroller of the Currency required, § 26-103.

Conveyances of real estate, formal requisites, § 45-302.

Exempted from operation of Money Lenders Law, § 25-610.

#### § 26-402 [5: 42]. Powers as to stock.

Such corporation shall have power, in its certificate of incorporation or in its by-laws, to provide that its shares of stock may be issued in series; to limit the number of shares which each stockholder may be allowed to hold; to prescribe the entrance fee to be paid by each stockholder at the time of subscribing, and to regulate the instalments to be paid on each share and the times at which they shall be payable. It shall also have power to enforce the payment of all instalments and other dues by such fines and forfeitures as its by-laws may from time to time provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 689.)

#### § 26-403 [5: 43]. Bonus to be paid by late subscribers.

Any person applying for membership or stock after a month from the time of the incorporation may be required to pay on subscribing such bonus or assessment as may be fixed by said by-laws in order to place said new members or stockholders on a footing with the original members and others holding stock at the time of such application. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 690.)

#### § 26-404 [5: 44]. Object—Powers of Comptroller of the Currency—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of national banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any building association incorporated under the provisions of this title, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall not exceed the sum of twenty-five dollars for the first five hundred thousand dollars or fractional part thereof of assets and the sum of ten dollars for each additional two hundred and fifty thousand dollars or fractional part thereof of assets, and be paid by such association to the Comptroller of the Currency at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of

Columbia shall make to the Comptroller of the Currency at least one report during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The said comptroller shall also have power to take possession of any company or association whenever in his judgment it is insolvent or is knowingly violating the laws under which such company is incorporated, and to liquidate the same in the manner provided in the laws of the United States in respect to national banks: *Provided further*, That from and after the first day of July, 1909, no person, company, association, copartnership, or corporation shall conduct or carry on in the District of Columbia the kind of business named in this chapter, without strict compliance in all particulars with the provisions of this chapter: *Provided*, That building associations organized and in actual operation before March 4, 1909, need not be incorporated. Any person, officer, or agent of any company, firm, or corporation who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than one thousand dollars or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any wilful false swearing in regard to any certificate, or report, or public notice required by the provisions of this chapter shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company, formed under or availing itself of the privileges of this chapter, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 691; Mar. 4, 1909, 35 Stat. 1058, ch. 303, § 1.)

#### COMPILER'S NOTE

The 1909 act amends § 691 of the 1901 act (Code) to read as above. It would seem, therefore, that the word "chapter" means the 1901 act (Code) and not merely §§ 26-404 and 26-405 (i. e., the sections of the 1901 act amended by the 1909 act) or that part of the 1901 act (Code) concerned with building associations (this chapter). However, similar provisions are found in § 732 of the 1901 act (Code) compiled herein as § 26-320.

#### AMENDMENT

Act of March 3, 1901, read as follows: "The object of such corporation shall be the accumulation of a capital in money, to be derived from the savings and accumulation by the members thereof, to be paid into said corporation in periodical instalments, in fixed and certain sums, and in such amount as shall be designated by the by-laws, until the value of all the shares of stock in said corporation, and every series thereof, shall be equal to the nominal or par value thereof or of some multiple thereof, at which time said corporation shall cease to exist, and in the meantime to enable the members thereof, by obtaining advances upon their shares of stock, to purchase or erect homes for themselves."

#### CROSS REFERENCES

Other powers and duties of comptroller concerning financial institutions, § 26-101 et seq.



Voluntary liquidation and dissolution of solvent financial corporations, § 26-103.

§ 26-405 [5:45]. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

No foreign association shall make loans of any kind or transact any building and loan business within the District of Columbia or maintain an office in the District of Columbia for the purpose of transacting such business until it procures from the Comptroller of the Currency a certificate of authority to do such business in said District, after complying with the following provisions:

(a) It shall deposit with the Treasurer of the United States \$50,000 in cash or bonds of the United States or bonds which the United States guarantees the payment of both principal and interest. A foreign association may collect and use the interest on securities deposited with the Treasurer of the United States, as hereinabove provided, so long as it fulfills its obligations and complies with the laws of the District of Columbia. It may also exchange them for other securities of the United States or for cash. The deposit made by a foreign association with the Treasury of the United States shall be held as security for all claims of residents of the District of Columbia against such association, and be liable for all judgments or decrees thereon, and subjected to the payment thereof in the same manner as the property of other nonresidents. Should an association cease to do business in said District, the Treasurer of the United States, upon a certificate from the Comptroller of the Currency, may release securities in his discretion, retaining sufficient to satisfy all outstanding liabilities;

(b) It shall file with the Comptroller of the Currency a certified copy of its charter, constitution, and bylaws, and other rules and regulations showing its manner of conducting business, together with a statement such as is required semiannually from all associations;

(c) It shall file with the Comptroller of the Currency a power of attorney appointing a citizen of the District of Columbia, resident within said District, the agent or attorney for such foreign association upon whom process of law can be served. There must also be filed a certified copy of the vote or resolution of the directors appointing such agent or attorney, which appointment shall continue until another agent or attorney is substituted, and said writing or power of attorney shall stipulate and agree on the part of such foreign association making the same that any lawful process against said association, which is served on such agent or attorney, shall be of the same legal force and validity as if served on such association within the District of Columbia; and, also, that in the case of the death or absence of the agent or attorney so appointed, service or process may be made upon the Comptroller of the Currency, and such power of attorney cannot be revoked or modified (except that a new one may be substituted) so long as any liability remains outstanding against such foreign association in the District of Columbia. The term

"process," used above, shall be held and deemed to include any writ, summons, or order whereby any action, suit, or proceeding shall be commenced, or which shall be issued in or upon any action, suit, or proceeding by any court, officer, or magistrate.

(d) It shall pay to the collector of taxes the following fees:

For filing an application for admission to do business in the District of Columbia, \$500;

For each certificate of authority and annual renewal thereof, \$200.

(e) When a foreign association has complied with the provisions of paragraph (c) of this section, and the Comptroller of the Currency is satisfied that it is doing or will do its building and loan business in the District of Columbia in accordance with the laws of the District of Columbia, he may issue his certificate of authority to such foreign association to do a building and loan business in the District of Columbia. Annually thereafter, if the Comptroller of the Currency is satisfied as herein provided, he shall issue a renewal of such certificate.

(f) Should the Comptroller of the Currency find that such foreign association does not conduct its building and loan business in accordance with law, or that the affairs of such association are in unsafe condition, or if such foreign association refuses to permit examination to be made, the Comptroller of the Currency may revoke the certificate of authority granted, after ninety days' notice, to such foreign association to do a building and loan business in the District of Columbia; *Provided*, That upon revocation of such certificate of authority the Comptroller of the Currency shall mail a notice thereof to the home office of such foreign association and cause a similar notice to be published in at least one daily newspaper of general circulation in the District of Columbia. After so notifying said home office and after the publication of said notice, it shall be unlawful for any agent of such foreign association to receive any further payments from shareholders residing in the District of Columbia.

(g) Every foreign association doing a building and loan business in the District of Columbia shall be subject to the same examination as are domestic associations and such examination may include examination of all subsidiaries of such foreign associations and all business operations wherever apparent: *Provided*, That the Comptroller of the Currency may accept reports of examination by other supervisory agents in lieu of making such examinations and provided that all the actual and necessary expense of such examinations of such foreign associations shall be paid by the association examined if said examination is made beyond the limits of the District of Columbia, but if made within the limits of the District of Columbia, the cost of the examination to be at the same rate and upon the same terms as provided in section 26-404.

(h) Whenever any taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by the laws of any State upon building and loan associations organized or incorporated under the laws of the District of Columbia, and doing business in the said State, in excess of the taxes, fines, penalties,



fees, licenses, or conditions precedent imposed by the laws of the District of Columbia upon foreign associations doing a building and loan business in the District of Columbia, the same taxes, fines, penalties, fees, licenses, or conditions precedent shall be imposed upon every association incorporated under the laws of such State doing, or applying to do, a building and loan business in the District of Columbia, so long as such excess taxes, fines, penalties, fees, licenses, or conditions precedent are imposed by such State; and upon the failure of any association incorporated under the laws of such State to comply therewith the Comptroller of the Currency shall revoke the certificate of authority of such association to do a building and loan business in the District of Columbia or shall refuse to grant such certificate of authority in the first instance.

(i) A foreign association which does a building and loan business in the District of Columbia without first complying with the provisions of this chapter, or which willfully violates or fails to comply with the provisions of laws relating to foreign associations, shall forfeit and pay not less than \$25 or more than \$500, to be recovered by an action in the name of the United States and on collection paid into the Treasury of the United States. (Mar. 4, 1909, 35 Stat. 1059, ch. 303, § 2; July 18, 1939, 53 Stat. 1060; ch. 322, § 1.)

#### COMPILER'S NOTES

Section 2 of the act of July 18, 1939, provided: "All other acts or parts of acts inconsistent herewith are hereby repealed. This act shall take effect on the date of its enactment."

The 1909 act purports to amend the 1901 Code (act of Mar. 3, 1901, 31 Stat. 1298, ch. 854) and, historically, should be considered amendatory thereof.

#### AMENDMENTS

Prior to the 1939 amendment, this section provided as follows: "That any building association incorporated or unincorporated, organized and existing under the laws of any State or Territory, except the District of Columbia, to do or now doing, in the District of Columbia, a building association business or otherwise operating as a building association, shall be subject to all the provisions of the foregoing section of this act in respect of the powers of the Comptroller of the Currency hereunder, and, any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money or stocks, bonds or mortgages or other securities to be approved by said officer not less than ten per centum of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposit of its assets as above described with the Comptroller for such purpose as it may from time to time desire so to do."

#### CROSS REFERENCES

Other powers and duties of Comptroller concerning financial institutions, § 26-101 et seq.

Other provisions concerning admission of foreign associations, § 26-103.

Semiannual publication of financial statements, § 29-105.

#### NOTES TO DECISIONS

##### COMPLIANCE WITH STATUTORY REQUIREMENTS

The "Union Home Builders" and similar organizations must comply with statutory provisions as to examination and control by Comptroller of the Currency. (33 O. A. G. 418.)

§ 26-406 [5: 46]. Advancements.

The moneys accumulated from time to time shall be offered to such shareholder or shareholders as shall bid the highest premium for preference or priority of right to an advancement of the ultimate value of one or more of his or their respective shares. The said premium shall consist of a percentage on the amount of the advance and shall be deemed to be a consideration or bonus paid by the shareholder for the present and immediate use and possession of the future or ultimate value of the share so advanced, and shall not be deemed usurious. The said premium may either be deducted in advance from the amount to be advanced to the shareholder or be made payable in monthly installments, in addition to legal interest on the sum advanced, as the by-laws may provide. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 692.)

#### NOTES TO DECISIONS

##### STATUS OF CONTRACT AFTER INSOLVENCY

Where contract between borrowing member of a building association by the giving of a bond and a deed of trust to secure the bond, is that in consideration of sum advanced he will pay to the association monthly payments, the insolvency of the association and appointment of a receiver will not abrogate the contract between it and one of its members and the substitution for that contract of some other arrangement which a court may deem equitable. *Armstrong v. United States Bldg. & Loan Assn.* (15 App. D. C. 1.)

##### SURRENDER OF STOCK

Where building association advanced money to one of its members and received therefor an assignment of stock held by him, and a deed of trust upon his real estate to secure his notes, a suit by a person who purchased the property was entitled to a release of the deed of trust upon payment of remaining notes, and the association could not enforce payment of accruing dues after the payment of the last note. *Eastern Bldg. & Loan Assn. v. Olmsted* (16 App. D. C. 387).

When borrower from building association surrenders his stock to the association upon mortgage loan being made to him, he becomes a creditor of the association and when accounting is made he is to be charged with amount actually received by him on account of loan, with interest, whether by way of premium, dues or interest. *Croissant v. Empire State Realty Co.* (29 App. D. C. 538).

##### USURIOUS PREMIUMS

A provision of building association mortgage that the borrower instead of paying the usual premium is to pay monthly during continuance of the mortgage, a specified sum called premium, in addition to legal rate of interest, is void as usurious payment. *Middle States Loan v. Baker* (19 App. D. C. 1).

The provision that premiums to be charged by building associations shall not be deemed usurious, is not retroactive, and it does not affect borrower's right to redeem mortgaged property from building association, when such right existed before the Code went into effect. *Washington Nat. Bldg. & Loan Assn. v. Fiske* (20 App. D. C. 514, cert. den. 188 U. S. 740, 47 L. Ed. 677, 23 Sup. Ct. 843).

Test to determine whether building association loan is usurious is usually whether the promise to pay the sum above legal interest depends upon a contingency, and not upon the happening of a certain event. The loan is not usurious if it depends upon a contingency. *Whelpley v. Ross* (25 App. D. C. 207).

§ 26-407 [5: 47]. Security for advancement.

For every advance made as aforesaid a bond in a penalty equal to the ultimate value of the shares advanced may be required, secured by a first mortgage or deed of trust on real estate, and a pledge of the



shares advanced upon, as additional or collateral security, which bond shall be conditioned for the payment at the stated meetings of the corporation of the monthly dues on the share so advanced upon and the interest on the sum advanced, and the instalments of premium, if made so payable, and all fines chargeable upon arrears of payments, until said shares shall reach their ultimate value aforesaid, or said advance be otherwise canceled or discharged. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 693.)

§ 26-408 [5: 48]. Profits.

The shares advanced upon shall participate equally with the other shares in the profits and the amounts paid by the advanced shareholders, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, the same as allowed on shares withdrawn not advanced upon, less all fines and a proportionate part of losses and other charges incurred. (Mar. 3, 1901, 31 Stat. 1299, ch. 854, § 694.)

§ 26-409 [5: 49]. Redemption of shares.

Where advances from the funds on hand can not be made on satisfactory terms, the shareholders failing to bid therefor, the by-laws may provide for the redemption of shares of stock, with the consent of the shareholders, and in case that can not be done, for the involuntary withdrawal and cancellation of shares, the said shares to be selected by lot, always from the oldest series, until exhausted, or the funds to be applied ratably among the owners of shares of the same series. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 695.)

§ 26-410 [5: 50]. Withdrawal by shareholder.

A shareholder shall be entitled to withdraw at any time, by giving such notice as the by-laws may require, where no advance has been made on his shares, in which case he shall be entitled to receive the amount of dues paid in by him on each of his shares, together with such proportion of the profits accrued or such rate of interest as said by-laws may determine, less all fines due and a proportionate part of all losses and other charges incurred: *Provided*, That not more than one-half of the funds in the treasury at any time shall be applicable to the demands of the withdrawing shareholders without the consent of the board of trustees. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 696.)

§ 26-411 [5: 51]. Repayment of advances.

A shareholder who has been advanced may at any time repay his advance upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the advance and of the accrued instalments of the premium, if that has been added to the advancement and made payable in instalments, together with all monthly dues, interest, and fines accrued and charged, and shall receive credit for all monthly dues paid on his shares and the profits thereon the same as are allowed under the by-laws on shares withdrawn not advanced upon, and, if the premium has been deducted in advance, with such proportion of

the premium as the by-laws may direct, and the balance remaining due, over and above such credits, shall be received by said corporation in satisfaction and discharge of said advance: *Provided*, That in case of the insolvency of the association, he shall not be entitled to credit for the full amount of dues paid by him, but shall only be entitled to a dividend upon said amount, in common with the nonadvanced shareholders. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 697.)

§ 26-412 [5: 52]. Forfeiture.

Any nonadvanced shareholder failing to pay the instalments due on his share and the fines due from him for such time as the by-laws shall determine, shall forfeit his stock, but may, on application, receive a return of the amount paid in on account of his stock, less the accrued fines. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 698.)

§ 26-413 [5: 53]. Foreclosure.

In case any advanced shareholder shall fail to pay all dues, interest, or premiums and shall be in arrears for any part of the same for the period of two months, the payment of the same and of the principal of the advance may be enforced by a foreclosure of the securities given for the same, and if upon a statement of account, as in case of a voluntary settlement of said advance, as hereinbefore authorized, there shall be any surplus of the proceeds of sale of the property given as security over the amount found due from such advanced shareholder, together with all costs incurred by the corporation, such surplus shall be paid to said defaulting shareholder, or his assigns, and his shares of stock so advanced upon shall be the property of the corporation. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 699.)

§ 26-414 [5: 54]. Investment of funds in real estate.

Such corporation shall not invest its fund in any real estate except what is necessary for the conduct of its business, but may purchase such property at sales made upon foreclosure of mortgages or in satisfaction of judgments or other liens held by it: *Provided*, That such property so purchased be sold within a reasonable time thereafter. (Mar. 3, 1901, 31 Stat. 1300, ch. 854, § 700.)

CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45-302.

§ 26-415 [5: 55]. Purchase of Home Owners' Loan Corporation bonds authorized.

The board of directors of any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia to do or now doing in the District of Columbia a building association business, in their discretion, may purchase the bonds of the Home Owners' Loan Corporation created pursuant to the authority of U. S. C., title 12, chapter 12 (and said association is hereby permitted to carry said bonds as an asset at the par value of said bonds) or may subscribe and pay for shares of any Federal corporation created or authorized by law to lend money to building and loan associations. (Mar. 3, 1901, ch. 854, § 55, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)



§ 26-416 [5: 56]. Exchange of real estate and debts and liens secured by real estate for Home Owners' Loan Corporation bonds authorized.

Any building association incorporated or unincorporated, organized and existing under the laws of the District of Columbia, to do or now doing, in the District of Columbia, a building association business, is authorized and empowered to exchange mortgages or deeds of trust or the notes or bonds secured thereby or other obligations and liens secured on real estate or any real estate which it may have or hold, for the bonds of the Home Owners' Loan Corporation created pursuant to the authority of U. S. C., title 12, chapter 12, and said association is hereby authorized to carry said bonds as an asset at the par value of said bonds. (Mar. 3, 1901, ch. 854, § 56, as added Mar. 27, 1934, 48 Stat. 506, ch. 96.)

### Chapter 5.—CREDIT UNIONS

#### Sec.

- 26-501. Short title.
- 26-502. Definition.
- 26-503. Organization—Certificate—Contents.
- 26-504. Approval of certificate—Report by Comptroller.
- 26-505. Recording certificate—Body corporate—Powers.
- 26-506. Supervision by Comptroller of the Currency—License—Revocation.
- 26-507. Powers.
- 26-508. Bylaws.
- 26-509. Membership.
- 26-510. Members' meetings—Voting—Proxy—Qualifications.
- 26-511. Management in general—Officers—Directors—Credit committee—Supervisory committee—Powers and duties.
- 26-512. Reserves.
- 26-513. Dividends.
- 26-514. Expulsion and withdrawal of members.
- 26-515. Shares issued to minors or in trust.
- 26-516. Taxation.
- 26-517. Restriction on use of words "credit union"—Penalty.
- 26-518. Right of repeal reserved.

§ 26-501 [5: 381]. Short title.

This chapter may be cited as the "District of Columbia Credit Unions Act." (June 23, 1932, 47 Stat. 326, ch. 272, § 1.)

#### STATUTORY REFERENCE

Federal Credit Unions, see U. S. C., title 12, ch. 14.

§ 26-502 [5: 382]. Definition.

A credit union is hereby defined to be a cooperative society organized for the purpose of promoting thrift among its members and creating a source of credit for them for provident purposes. (June 23, 1932, 47 Stat. 326, ch. 272, § 2.)

§ 26-503 [5: 383]. Organization—Certificate—Contents.

Any seven or more persons, who are actual residents of, or do business or are employed within, the District of Columbia, and who desire to form a credit union, shall subscribe before some officer in the District competent to take the acknowledgment of deeds, an organization certificate which shall specifically state—

First. The name of the corporation, which shall include the words "credit union" and "District of Columbia."

Second. The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

Third. The par value of the shares of the credit union, which shall not exceed \$10 each.

Fourth. The proposed field of membership, specified in such detail as the Commissioners of the District of Columbia may require.

Fifth. The term of the credit union's existence, which may be perpetual. (June 23, 1932, 47 Stat. 326, ch. 272, § 3.)

§ 26-504 [5: 384]. Approval of certificate—Report by Comptroller.

The organization certificate shall be presented to the Commissioners of the District of Columbia, who may, in their discretion, approve the certificate. The said Commissioners are authorized to refer any such proposed certificate to the Comptroller of the Currency, who shall, within a reasonable time, submit a report to the said Commissioners with respect (1) to the conformity of the certificate to the provisions of this chapter, (2) the general character and fitness of the subscribers, and (3) the advisability of establishing a credit union in the proposed field of membership. (June 23, 1932, 47 Stat. 327, ch. 272, § 4.)

#### CROSS REFERENCE

Powers and duties of Comptroller, § 26-506.

§ 26-505 [5: 385]. Recording certificate—Body corporate—Powers.

The certificate, if approved by the Commissioners of the District of Columbia, shall be filed for record in the office of the recorder of deeds for the District of Columbia, and shall be recorded by him. At such time as the approved certificate is so filed, the subscribers and their successors shall thereupon become a body corporate and as such shall, subject to the limitations of section 26-508 (relating to approval of by-laws), be vested with all the powers and charged with all the liabilities conferred and imposed by this chapter upon corporations organized thereunder as credit unions: *Provided*, That the last paragraph of section 45-708 shall have no application to credit unions. (June 23, 1932, 47 Stat. 327, ch. 272, § 5.)

#### COMPILER'S NOTE

Section 45-708 relates to fees of recorder of deeds.

§ 26-506 [5: 386]. Supervision by Comptroller of the Currency—License—Revocation.

The provisions of sections 26-101, 26-102 as now or hereafter amended (relating to supervision by the Comptroller of the Currency of banking institutions in the District of Columbia), shall apply to credit unions, except that the Comptroller of the Currency may relieve credit unions from compliance with any such requirements to such extent and in such manner as he deems will not prejudice the proper conduct of the affairs of such credit unions: *Provided, however*, That the publication of reports named in section 26-101 shall not be required of credit unions having assets of less than \$100,000 and fees incident to making the examinations specified in section 26-102 shall not exceed a basic fee of \$5.03 per \$1,000 of assets per annum: *Provided, however*, That it shall be unlawful for any such credit union to transact business in the



District of Columbia without procuring a license from the District of Columbia; and all such credit unions shall pay a license tax of \$15 per annum to the District of Columbia. No license shall be granted for a period longer than one year: *Provided, however,* That the Commissioners of the District of Columbia may suspend or revoke a license upon proof of the bankruptcy or insolvency of any such credit union or upon conviction of a violation of any provision of this chapter or of any law or regulation of the District of Columbia or of the United States. (June 23, 1932, 47 Stat. 327, ch. 272, § 6.)

## CROSS REFERENCES

Approval of certification of incorporation, § 26-504.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Refund of fees when license refused, § 47-1018.

## § 26-507 [5: 387]. Powers.

A credit union shall have succession in its corporate name during its existence and shall have power—

First. To make contracts.

Second. To sue and be sued in its corporate name.

Third. To adopt and use a common seal and alter the same at pleasure.

Fourth. To purchase, hold, and dispose of property necessary to enable the corporation to carry on its operations.

Fifth. To make loans to its members for provident purposes upon such terms and conditions as the by-laws provide and as the credit committee may approve at rates of interest not exceeding 1 per centum per month on unpaid balances, inclusive of all charges incident to the making of the loan: *Provided,* That no loan to a director, officer, or member of a committee shall exceed the amount of his holdings in the company in shares nor shall any such director, officer, or member indorse for borrowers. A borrower may prior to maturity repay his loan in whole or in part on any business day.

Sixth. To receive of its members payment on shares.

Seventh. To invest in the paid-up shares of building and loan associations and of other credit unions to an extent not to exceed 25 per centum of its capital, and in any investment legal for savings banks or for trust funds in the District of Columbia.

Eighth. To make deposits in banks and trust companies in the District of Columbia under the supervision of the Comptroller of the Currency.

Ninth. To borrow in an aggregate outstanding amount not exceeding 40 per centum of its paid-in and unimpaired capital.

Tenth. To fine members for failure to meet promptly their obligations to such corporation.

Eleventh. To impress a lien upon the shares and dividends of any member to the extent of any loan made to him and any dues or fines payable to him. (June 23, 1932, 47 Stat. 328, ch. 272, § 7.)

## COMPILER'S NOTE

The word "to" in the next-to-last line probably should read "by."

## § 26-508 [5: 388]. Bylaws.

(a) The incorporators shall subscribe, acknowledge, and submit to the Commissioners of the District of Columbia proposed by-laws, and no credit union shall receive payments on account of shares or make any loans until such proposed by-laws have been approved by the commissioners as being in conformity with the provisions of this chapter.

(b) The by-laws shall prescribe the purposes for which the corporation is formed, the qualifications for membership, the date of the annual meeting, the manner of conducting meetings, the methods by which members shall be notified of meetings and the number of members which shall constitute a quorum, the number of directors and the compensation and duties of officers, the number of members of the credit committee, the fines, if any, to be charged for failure of members to meet promptly obligations to the corporation, the amount of the entrance fee, if any, to be paid, and such other regulations as are deemed necessary.

(c) Amendments of the by-laws may be adopted by a three-fourths vote of the members present at any members' meeting, but the amendments shall not take effect until approved by the Commissioners of the District of Columbia as being duly adopted and in conformity with the provisions of this chapter. The meeting shall be duly called for the purpose and the proposed amendments shall be set forth in the call. (June 23, 1932, 47 Stat. 328, ch. 272, § 8.)

## § 26-509 [5: 389]. Membership.

Credit-union membership shall consist of the incorporators and such other persons or organizations as may be elected to membership and subscribe to at least one share but not more than two hundred shares by any one individual, pay the initial installment thereon, and the entrance fee, if any; except that credit-union membership shall be limited to groups the members of which are actual residents of or do business or are employed within the District of Columbia, and either have a common bond of occupation of association or reside within a well-defined neighborhood or community. (June 23, 1932, 47 Stat. 329, ch. 272, § 9.)

## § 26-510 [5: 390]. Members' meetings—Voting—Proxy—Qualifications.

The fiscal year of all credit unions shall end December 31. The annual meeting of the corporation shall be held at such time during the month of January and at such place as the by-laws shall prescribe. Special meetings may be held in the manner indicated in the by-laws. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent delegated for the purpose. No member shall, irrespective of the number of shares held by him, have more than one vote; and, after a credit union has been incorporated one year, no member thereof shall be entitled to vote until he has been a member for more than three months. All offices of a credit union shall be in the District of Columbia. (June 23, 1932, 47 Stat. 329, ch. 272, § 10.)



§ 26-511 [5: 390a]. Management in general—Officers—Directors—Credit committee—Supervisory committee—Powers and duties.

(a) *General*.—The business affairs of a credit union shall be managed by a board of not less than five directors, a credit committee of not less than three members, and a supervisory committee of three members, to be elected at the annual meeting, and to hold office for such terms, respectively, as the by-laws may provide and until successors qualify; except that prior to the first annual meeting all the business affairs of a credit union shall be managed by the subscribers to the certificate of incorporation. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the Commissioners of the District of Columbia within ten days of their election. No member of the board or of either committee shall, as such, be compensated: *Provided*, That no person shall be elected to the board or to either committee unless he be duly elected to membership as provided in section 26-509.

(b) *Officers*.—At their first meeting after the annual meeting the directors shall elect from their own number a president, a vice-president, a clerk, and a treasurer, who shall be the executive officers of the corporation. The offices of clerk and treasurer may be held by the same person. The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager of the corporation.

(c) *Directors*.—The board of directors shall have the general direction of the affairs of the corporation. They shall act upon application for membership; fix the amount of the surety bond required of any officer having custody of funds; recommend declaration of dividends; determine interest rates on loans: *Provided, however*, That the interest rate on loans shall not be in excess of the maximum amount fixed by the provisions of this chapter; fill vacancies in the board and in the credit committee until successors to be elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine the maximum loans other than loans to members; determine the maximum individual shareholdings and the maximum individual loan which can be made with and without security, except that no loan in excess of \$50 shall be made without adequate security; and transmit to the members recommended amendments to the by-laws. For the purposes of this subdivision an assignment of shares or the indorsement of a note shall be deemed security.

(d) *Credit committee*.—The credit committee shall hold meetings, of which due notice shall be given to its members, to consider applications for loans to members of the corporation, and no loan shall be made unless all members of the committee who are present when the application is considered and a majority of all the committee approve the loan. Applications for loans shall be on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required.

(e) *Supervisory committee*.—The supervisory committee shall make an examination of the affairs of the credit union at least quarterly, including an audit of its books; shall make an annual audit and report to be submitted at the annual meeting of the corporation; by a unanimous vote may suspend any officer of the corporation, or any member of the credit committee or of the board of directors until the next members' meeting, at which time the suspension shall be acted on by the members; and, by a majority vote, may call a meeting of the shareholders to consider any violation of this chapter or of the by-laws, or any practice of the corporation deemed by the committee to be unsafe or unauthorized. The said committee shall fill vacancies in its membership until successors to be elected at the next annual meeting have qualified: *Provided, however*, That before the treasurer shall enter upon his duties he shall give bond with good and sufficient security, in an amount to be determined by the board of directors, conditioned upon the faithful performance of his trust. (June 23, 1932, 47 Stat. 329, ch. 272, § 11.)

§ 26-512 [5: 390b]. Reserves.

All entrance fees and fines provided by the by-laws and, before the declaration of any dividend therefrom, 20 per centum of the net earnings of each year, shall be set aside as a reserve fund against bad loans, which fund shall be kept liquid and intact and not distributed except in case of liquidation. (June 23, 1932, 47 Stat. 330, ch. 272, § 12.)

§ 26-513 [5: 390c]. Dividends.

At the annual meeting a dividend may be declared from net earnings on recommendation of the board, which dividend shall be paid on all paid-up shares outstanding at the end of the preceding fiscal year. Shares which become fully paid up during such year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full. (June 23, 1932, 47 Stat. 330, ch. 272, § 13.)

§ 26-514 [5: 390d]. Expulsion and withdrawal of members.

A member may be expelled by a two-thirds vote of the members of the corporation present at a special meeting called for such purpose, but only after an opportunity has been given him to be heard. The credit union may require sixty days' notice of intention to withdraw shares. Expulsion or withdrawal shall not operate to relieve a member from any remaining liability to the credit union. All amounts paid in on shares or deposited by expelled or withdrawing members prior to their expulsion or withdrawal shall be paid to them in the order of their withdrawal or expulsion, but only as funds become available and after deducting any amounts due from such members to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 14.)

§ 26-515 [5: 390e]. Shares issued to minors or in trust.

Shares may be issued and deposits received in the name of a minor or in trust in such manner as the



by-laws may provide. The name of the beneficiary shall be disclosed to the credit union. (June 23, 1932, 47 Stat. 331, ch. 272, § 15.)

§ 26-516 [5: 390f]. Taxation.

Credit unions, but not the members thereof, shall be exempt from Federal and District of Columbia taxation except taxes upon real property. (June 23, 1932, 47 Stat. 331, ch. 272, § 16.)

§ 26-517 [5: 390g]. Restriction on use of words "credit union"—Penalty.

It shall be unlawful for any individual, partnership, association, or corporation, except corporations organized in accordance with this chapter, to transact business in the District of Columbia under any name or title containing the words "credit union," or to transact business at any place in the United States under any name or title containing the words "credit union" and "District of Columbia" or other words indicating that the business is transacted pursuant to authority of any Act of Congress. Any individual, partnership, association, or corporation violating this section shall upon conviction thereof be subject to a fine not in excess of \$100 for each day during which the violation continues. (June 23, 1932, 47 Stat. 331, ch. 272, § 17.)

§ 26-518 [5: 390h]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal this chapter or any part thereof, or any charter or certificate of incorporation issued pursuant to the provisions of this chapter. (June 23, 1932, 47 Stat. 331, ch. 272, § 18.)

## Chapter 6.—MONEY LENDERS—LICENSES

Sec.

- 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.
- 26-602. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.
- 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.
- 26-604. Register to be kept—Contents—Inspection of register—Annual statements.
- 26-605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.
- 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.
- 26-607. Penalties—Enforcement.
- 26-608. Attorneys' fees allowed on foreclosure.
- 26-609. Contracts for liquidated or other damages prohibited.
- 26-610. Persons, associations, and corporations exempt from operation of this chapter.
- 26-611. Commissioners to enforce—Rules and regulations.

§ 26-601 [17: 21]. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

It shall be unlawful and illegal to engage in the District of Columbia in the business of loaning money upon which a rate of interest greater than six per centum per annum is charged on any security of any

kind, direct or collateral, tangible or intangible, without procuring license; and all persons, firms, voluntary associations, joint-stock companies, incorporated societies, and corporations engaged in said business shall pay a license tax of five hundred dollars per annum to the District of Columbia. No license shall be granted to any person, firm, or voluntary association unless such person and the members of any such firm or voluntary association shall be bona fide residents of the District of Columbia, and no license shall be granted for a period longer than one year, and no license shall be granted to any joint-stock company, incorporated society, or corporation unless and until such company, society, or corporation shall, in writing and in due form, to be first approved by and filed with the commissioners of the District of Columbia, appoint an agent, resident in the District of Columbia, upon whom all judicial and other process or legal notice directed to such company, society, or corporation may be served. And in the case of death, removal from the District, or any legal disability or disqualification of any such agent, service of such process or notice may be made upon the Superintendent of Licenses of the District of Columbia. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 1; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

### AMENDMENT

The 1917 act substituted "Superintendent of Licenses" for the "assessor."

### CROSS REFERENCES

Businesses exempted from act, § 26-610.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Provisions concerning interest and usury generally do not apply to this chapter, § 28-2703.

Refund of fees when license refused, § 47-1018.

Rules and regulations governing money lenders, § 26-611.

Usury, § 28-2703.

### NOTES TO DECISIONS

#### OCCASIONAL LOANS

A nonresident who makes occasional loans on real estate in the District, is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

#### OFFICE OUTSIDE THE DISTRICT

A pawnbroker violates this law if he stores pledged goods in the city of Washington, and uses it as a collecting center, but applications for loans are made just over the line in Virginia, to which place free automobile service is maintained, and loans are there made at an excessive rate. *Horning v. District of Columbia* (254 U. S. 135, 65 L. Ed. 185, 41 Sup. Ct. 53).

#### SMALL LOANS

Loan Shark Law was intended to apply only to persons making small loans upon personal security and not to a case in which a debt of \$177,500 was secured by a first trust upon real estate. *Von Rosen v. Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

§ 26-602 [17: 22]. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

Applications for license to conduct such business must be made in writing to the Commissioners of the District of Columbia, and shall contain the full names and addresses of applicants, if natural per-



sons, and in the case of firms and voluntary associations, the full names and addresses of all the members thereof, and in the case of joint-stock companies, incorporated societies, and corporations, the full names and addresses of the officers and directors thereof and under what law or laws organized or incorporated, and the place where such business is to be conducted, and such other information as the said commissioners may require. Every license granted shall date from the first of the month in which it is issued and expire on the 31st day of the following October, and such license shall be kept conspicuously displayed in the place of business of the licensee. Every application shall be filed not less than thirty days prior to the granting of such license, and notice of the filing of such application shall be posted in the office of the Superintendent of Licenses of the said District and be published twice a week for three successive weeks in a daily newspaper published in the District of Columbia. Protest may be made by any person to the issuing of such license, and when such protests are filed with the said commissioners the latter shall give public notice of and hold a public hearing upon such protests before issuing such license. The said commissioners shall have the power to reject any application for license after a hearing upon such protest or for failure on the part of the applicant to observe this chapter, or when such applicant shall have violated its provisions. (Feb. 4, 1913, 37 Stat. 657, ch. 26, § 2; Mar. 3, 1917, 39 Stat. 1006, ch. 160.)

#### AMENDMENT

The 1917 act substituted "Superintendent of Licenses" for the "assessor."

#### § 26-603 [17: 23]. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

Each application shall be accompanied by a bond to the District of Columbia in the penal sum of five thousand dollars, with two or more sufficient sureties, and conditioned that the obligor will not violate any law relating to such business. The execution of any such bond by a fidelity or surety company authorized by the laws of the United States to transact business therein shall be equivalent to the execution thereof by two sureties, and such company, if excepted to, shall justify in the manner required by law of fidelity and surety companies. If any person shall be aggrieved by the misconduct of any such licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation, or by his, their, or its violation of any law relating to such business, and shall recover a judgment therefor, such person or his personal representative or heirs or distributees may, after a return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action in his own name upon such bond herein required in any court having jurisdiction of the amount claimed. The commissioners of the District of Columbia shall furnish to anyone applying therefor a certified copy of any such bond filed with them, upon the payment of a fee of twenty-five cents, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person,

firm, voluntary association, joint-stock company, incorporated society, or corporation whose names appear thereon. Said bond shall be renewed and refiled annually in October of each year, or the licensed person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall within thirty days thereafter, cease doing business, and their license shall be revoked by the said commissioners, but said bond until renewed and refiled as aforesaid shall be and remain in full force and effect. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 3.)

#### § 26-604 [17: 24]. Register to be kept—Contents—Inspection of register—Annual statements.

Every person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall keep a register, approved by said commissioners, showing in English, the amount of money loaned, the date when loaned and when due, the person to whom loaned, the property or thing named as security for the loan, where the same is located and in whose possession, the amount of interest, all fees, commissions, charges, and renewals charged, under whatever name. Such register shall be open for inspection to the said commissioners, their officers and agents, on every day, except Sundays and legal holidays, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall, on or before the 20th day of January of each year, make to the said commissioners an annual statement in the form of a trial balance of its books on the 31st day of December in each year, specifying the different kinds of its liabilities and the different kinds of its assets, stating the amount of each, together with such other information as may be called for. (Feb. 4, 1913, 37 Stat. 658, ch. 26, § 4.)

#### § 26-605 [17: 25]. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.

No such person, firm, voluntary association, joint-stock company, incorporated society, or corporation shall charge or receive a greater rate of interest upon any loan made by him or it than one per centum per month on the actual amount of the loan, and this charge shall cover all fees, expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security. The foregoing interest shall not be deducted from the principal of loan when same is made. Every such person, firm, voluntary association, joint-stock company, incorporated society, or corporation conducting such business shall furnish the borrower a written, type-written, or printed statement at the time the loan is made, showing, in English, in clear and distinct terms, the amount of the loan, the date when loaned and when due, the person to whom the loan is made, the name of the lender, the amount of interest charged, and the lender shall give the borrower a plain and complete receipt for all payments made on account of the loan at the time such payments



are made. No such loan greater than two hundred dollars shall be made to any one person: *Provided*, That any person contracting, directly or indirectly, for, or receiving a greater rate of interest than that fixed in this chapter, shall forfeit all interest so contracted for or received; and in addition thereto shall forfeit to the borrower a sum of money, to be deducted from the amount due for principal, equal to one-fourth of the principal sum: *And provided further*, That any person in the employ of the Government who shall loan money in violation of the provisions of this chapter shall forfeit his office or position, and be removed from the same. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 5.)

**§ 26-606 [17: 26]. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.**

Complaints against any licensee or applicant for a license shall be made in writing to the said commissioners, and notice thereof of not less than three days shall be given to said licensee or applicant by serving upon him a concise statement of the facts constituting the complaint, and a hearing shall be had before the said commissioners within ten days from the date of the filing of the complaint, and no adjournment shall be taken for longer than one week. A daily calendar shall be kept of all hearings by the said commissioners, which shall be posted in a conspicuous place in their public office for at least three days before the date of such hearings. The said commissioners shall render their decision within eight days from the time the matter is finally submitted to them. Said commissioners shall keep a record of all such complaints and hearings, and may refuse to issue and shall suspend or revoke any license for any good cause shown, within the meaning and purpose of this chapter; and when it is shown to their satisfaction, whether as a result of a written complaint as aforesaid or otherwise, that any licensee or applicant under this chapter either before or after conviction, is guilty of any conduct in violation of this or any law relating to such business it shall be the duty of the said commissioners to suspend or revoke the license of such licensee or reject the petition of the applicant, but notice of the written complaint or proposed action shall be presented to and reasonable opportunity shall be given said licensee or applicant to be heard in his defense. Whenever for any cause such license is revoked, said commissioners shall not issue another license to said licensee until the expiration of at least one year from the date of revocation of such license, and not at all if such licensee shall have been convicted of a violation of this chapter under the provisions of section 26-607 thereof. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 6.)

**CROSS REFERENCES**

Refund of fees when license refused, § 47-1018.  
Revocation or suspension of license for violation of the Uniform Narcotic Drug Act, § 33-418.

**§ 26-607 [17: 27]. Penalties—Enforcement.**

Any violation of this chapter shall be punished by a fine of not less than twenty-five dollars and not greater than two hundred dollars, or by imprisonment in the jail or the workhouse of the District of Columbia for not less than five nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. The said commissioners shall cause the corporation counsel to institute criminal proceedings for the enforcement of this chapter before any court of competent jurisdiction. (Feb. 4, 1913, 37 Stat. 659, ch. 26, § 7.)

**§ 26-608 [17: 28]. Attorneys' fees allowed on foreclosure.**

In any foreclosure on any loan made under this chapter no charges for attorneys' or agents' fees shall be made or collected which will exceed ten per centum of the amount found due in such foreclosure proceedings. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 8.)

**§ 26-609 [17: 29]. Contracts for liquidated or other damages prohibited.**

In any contract made in pursuance of the provisions of this chapter it shall be unlawful to incorporate any provision for liquidated or other damages as a penalty for any default or forfeiture thereunder. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 9.)

**§ 26-610 [17: 30]. Persons, associations, and corporations exempt from operation of this chapter.**

Nothing contained in this chapter shall be held to apply to the legitimate business of national banks, licensed bankers, trust companies, savings banks, building and loan associations, or real estate brokers, as defined in sections 47-1701 to 47-1709. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 10.)

**§ 26-611 [17: 31]. Commissioners to enforce—Rules and regulations.**

The enforcement of this chapter shall be intrusted to the Commissioners of the District of Columbia, and they are hereby authorized and empowered to make all rules and regulations necessary in their judgment for the conduct of such business and the enforcement of this chapter in addition hereto and not inconsistent herewith. (Feb. 4, 1913, 37 Stat. 660, ch. 26, § 11.)

**CROSS REFERENCE**

Rules and regulations generally, § 1-226 et seq.





## TITLE 27.—CEMETERIES AND CREMATORIES

Chap.	Sec.
1. Cemetery associations—Regulatory provisions.....	27-101

### Chapter 1.—CEMETERY ASSOCIATIONS — REGULATORY PROVISIONS

Sec.	
27-101.	Incorporation—Powers.
27-102.	Powers to acquire and sell land.
27-103.	Land to be platted and surveyed.
27-104.	Inclosure and ornamentation of land—Purchase of equipment.
27-105.	Duty to inclose and underdrain.
27-106.	Application of proceeds of sales of lots.
27-107.	Officers.
27-108.	Election of officers.
27-109.	Voters—Members of the corporation.
27-110.	Bylaws.
27-111.	Exemption from taxation and sale on execution.
27-112.	Dedication of land—Title vested in perpetuity.
27-113.	Grants and bequests for care of lots.
27-114.	Distance from city and from dwellings.
27-115.	Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.
27-116.	Register—Contents.
27-117.	Superintendent to register at health department.
27-118.	Removal of dead bodies—Procedure—Duty of superintendent.
27-119.	Conveyance of dead body through the District of Columbia—Death from pestilential diseases.
27-120.	Reports of death—Keeping of dead bodies—Exhibition of dead bodies.
27-121.	Place of burial.
27-122.	Mode of burial.
27-123.	Reopening graves—Death from pestilential diseases.
27-124.	Crematories—Consent of property owners—Permit.
27-125.	Permit to cremate—Embalming.
27-126.	Penalty.
27-127.	Prosecutions.
27-128.	Disinterment by order of court.
27-129.	Public crematory—Cremation required in certain cases.
27-130.	Establishment of crematory—Rules and regulations—Fees.
27-131.	Act for promotion of anatomical science not affected by crematory law.

#### § 27-101 [5: 71]. Incorporation—Powers.

When five or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658.)

#### CROSS REFERENCES

Locations permitted, § 27-114.  
Public crematory, §§ 27-129 to 27-131.

#### § 27-102 [5: 72]. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or purchase any lot or lots of land not exceeding fifty acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659.)

#### CROSS REFERENCE

Conveyances by corporations, formal requisites, § 45-302.

#### § 27-103 [5: 73]. Land to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the office of the surveyor of the District. Each lot shall be duly numbered by the surveyor and such number shall be marked on the plat and recorded. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660.)

#### CROSS REFERENCES

Commissioners to obtain right-of-way through burial grounds for streets, § 1-615.

Duties of surveyor concerning plats and recording thereof, § 1-605 et seq.

#### § 27-104 [5: 74]. Inclosure and ornamentation of land—Purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661.)

#### § 27-105 [5: 75]. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the commissioners of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671.)

#### § 27-106 [5: 76]. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in this chapter. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662.)



## § 27-107 [5: 77]. Officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than three directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of this chapter. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663.)

## § 27-108 [5: 78]. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in section 27-101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664.)

## § 27-109 [5: 79]. Voters—Members of the corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to one vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665.)

## § 27-110 [5: 80]. Bylaws.

Each corporation shall have power to establish and change by-laws and prescribe rules and regulations for its government and the duties of its officers and the management of its property. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666.)

## § 27-111 [5: 81]. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667.)

## § 27-112 [5: 82]. Dedication of land—Title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding five acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Commissioners of the District of Columbia) vest the title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668.)

## § 27-113 [5: 83]. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preserva-

tion, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the District Court of the United States for the District of Columbia shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669.)

## NOTES TO DECISIONS

## TRUSTS FOR PERPETUAL MAINTENANCE

This section permits trusts for the perpetual maintenance of cemetery lots and monuments or other structures erected thereon, and is not in conflict with the rule against perpetuities in 1901 Code, § 1023 (§ 45-102). Such a trust was held valid where it was to be carried out by a New York corporation in the State of New York. *Iglehart v. Iglehart* (204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329, affg. 26 App. D. C. 209).

## § 27-114 [5: 84]. Distance from city and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the city of Washington, in the District of Columbia, nor in said District, within one mile and a half from the boundaries of said city; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than two hundred yards of any dwelling-house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Commissioners of said District. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670.)

## § 27-115 [5: 85]. Lots to be conspicuously marked—Plat to be recorded—Size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the office of the surveyor of said District; the grave spaces hereafter laid out for the burial of persons above ten years of age to be at least eight feet by three feet, and those for the burial of children under ten years of age at least six feet by two feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, four feet by three feet. No coffin shall be buried in said District so that any part thereof is within less than four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years of age, when it shall not be less than three feet below that level. (Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681.)

## CROSS REFERENCE

Powers and duties of surveyor concerning plats and recording thereof, § 1-605 et seq.



## § 27-116 [5: 86]. Register—Contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in said District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the health department and of the police department of said District. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673.)

## CROSS REFERENCE

Anatomical board for disposition of human bodies for scientific purposes, §§ 2-201 to 2-209.

## § 27-117 [5: 87]. Superintendent to register at health department.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the health department of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674.)

## CROSS REFERENCE

Anatomical board for disposition of indigent dead, § 2-201 et seq.

## § 27-118 [5: 88]. Removal of dead bodies—Procedure—Duty of superintendent.

No dead body of any human being or any part of such body shall, in said District, be removed from place to place, interred, disinterred, or in any manner disposed of without a permit for such removal, interment, disinterment, or disposal granted by the health officer of said District, nor otherwise than in accordance with the terms of said permit; permits for the removal, interment, or disposal to be issued upon the presentation of a proper death certificate, signed by a physician registered at the health department of said District, who has attended the deceased during his or her last illness, or by the coroner of said District or his deputy, or by the proper municipal, county, or state authorities at the place where the death occurred; permits for disinterment (including permission to reinter or transport the body disinterred) to be issued upon the written application of the nearest relative or the legal representative of the deceased; and no superintendent or other person in charge of any cemetery in said District or other place for the disposal of dead bodies shall assist in or assent to or allow any such interment, disinterment, or disposition to be made in such cemetery or place until permit shall be given as aforesaid. It shall be the duty of every such superintendent or other person who shall receive any such permit aforesaid to indorse thereon the date of the interment,

disinterment, or disposal, and to preserve, sign, and return the same to the health officer of said District before six o'clock postmeridian of the Saturday following the day of burial, disinterment, or disposal. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 675.)

## COMPILER'S NOTE

Provisions of this section inoperative in regard to White's Tabernacle Cemetery, see statutory references to § 27-121.

## CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties, §§ 2-206, 22-3103.

## NOTES TO DECISIONS

## POST-MORTEM EXAMINATIONS

In a prosecution for homicide, it is not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, notwithstanding the fact that the Government gave no notice of its intention to make such an examination; "nor is it material whether or not there was full compliance with the provisions of section 686 of the District of Columbia Code (§ 27-128)." *Laney v. United States* (54 App. D. C. 56, 294 Fed. 412).

## § 27-119 [5: 89]. Conveyance of dead body through the District of Columbia—Death from pestilential diseases.

No dead body or part of the dead body of any human being shall be in any manner carried or conveyed from, in, to, or through said District by any person, or by means of any boat, vessel, car, stage, or other vehicle, or by any public or private conveyance, without a permit therefor first granted by the health officer of said District: *Provided*, That bodies or parts of dead bodies aforesaid, except such as have died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, diphtheria, or scarlet fever, may be brought into said District, or carried through the same in transit, upon a permit of the proper municipal, county, or State authorities of the place at which such person died; and whenever the remains of any deceased person have been conveyed, transferred, or removed beyond the limits of said District it shall be the duty of the person or agent or officer of the corporation having charge of such conveyance, transfer, or removal to detach, date, sign, and return to the health officer the permit authorizing such conveyance, transfer, or removal before six o'clock postmeridian of the Saturday following the day of such conveyance, transfer, or removal of said remains. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 676.)

## § 27-120 [5: 90]. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.

It shall be the duty of any person or persons having custody or control of the dead body of any human being or any part of such body to report in writing or cause to be reported in writing, to the health officer of said District, within forty-eight hours after the death of the deceased, the name of said deceased and the location of the body or part thereof. No such body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body



or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than one week after death without permission of the health officer, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the health officer of said District so to do, except such exhibition be in connection with some government museum or with some institution of learning permanently located in said District. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677.)

#### § 27-121 [5: 91]. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the commissioners of said district and authorized by them to be used as such. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678.)

#### STATUTORY REFERENCES

*Confederate veterans dying in District of Columbia—Burial in Arlington.*—Hereafter persons dying in the District of Columbia or in the immediate vicinity thereof who have served in the Confederate Armies during the Civil War may be buried in the Confederate section of the Arlington National Cemetery without additional expense to the United States upon the certificate of Camp Numbered 171, United Confederate Veterans of the District of Columbia, that such persons are entitled to burial under the authority herein given: *Provided*, That all such interments shall be under the supervision and subject to the approval of the Secretary of War. (Aug. 24, 1912, 37 Stat. 417, ch. 355.)

*White's Tabernacle Cemetery—Interments prohibited.*—From and after the date of the passage of this act (December 16, 1921) it shall be unlawful to inter the body of any person in the cemetery known as the cemetery of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia and situate in the District of Columbia, to wit: Part of a tract called "Chappell's Vacancy," contained within the following metes and bounds, namely: Beginning for the same at the southeast corner of the land conveyed to Frederick Bangerter by deed recorded in Liber Numbered 785, folio 474, of the land records of the District of Columbia, and running thence north 15¼ degrees east, 20.44 perches; thence south 89 degrees east, 3.9 perches; thence south 15¼ degrees west, 20.44 perches; thence north 89 degrees west, 3.9 perches to the point of beginning; and any person or persons violating the provisions of this act, or aiding or abetting its violation, shall be subject to a fine of not less than \$100, nor more than \$500 for each offense, to be collected as other fines are collected in the District of Columbia. (Dec. 16, 1921, 42 Stat. 348, ch. 7, § 1.)

*Removal of bodies and tombstones.*—The board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, in the District of Columbia, are hereby authorized and empowered, under such regulations as the Commissioners of the District of Columbia may prescribe, to disinter and remove all the bodies now buried in said cemetery lot, and to transfer and reinter the same in some other suitable cemetery or cemeteries selected by the said board of officers of White's Tabernacle Numbered 39 of the Ancient United Order of Sons and Daughters, Brethren and Sisters of Moses, and at the cost and expense of said order: *Provided*, That each monument, tombstone, or marker marking any grave or graves in said described burial ground shall be transferred to mark the grave or graves in which such body or bodies are

to be interred, and shall be there placed in position as soon as can be done without danger of settling. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 2.)

*Restrictions on removal of bodies suspended.*—Insofar as the same shall be inconsistent with the provisions of this act as to the cemetery lot herein described, sections 675 and 680 (§§ 27-118, 27-123) shall be, and the same are hereby, declared inoperative, otherwise said sections 675 and 680 (§§ 27-118, 27-123) to remain unqualified and in full force and effect. (Dec. 16, 1921, 42 Stat. 349, ch. 7, § 3.)

#### § 27-122 [5: 92]. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within ten years; no body shall be temporarily deposited in any vault for a longer period than one month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than one year. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679.)

#### § 27-123 [5: 93]. Reopening graves—Death from pestilential diseases.

No grave in said District shall be reopened, except for the purpose of disinterment, within ten years after burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than one foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever: *Provided*, That the health officer of the District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above. (Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12.)

#### COMPILER'S NOTE

Provisions of this section inoperative in regard to White's Tabernacle Cemetery, see statutory references to § 27-121.

#### AMENDMENT

The 1936 amendment added the proviso to this section.

#### CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalties, §§ 2-206, 22-3103.

#### § 27-124 [5: 94]. Crematories—Consent of property-owners—Permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly-established cemetery in said District, unless



such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of two hundred feet from the place where such crematory is to be erected and maintained and a permit from the commissioners of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding five, to be specified therein: *Provided*, That this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682.)

#### § 27-125 [5: 95]. Permit to cremate—Embalming.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the health officer of said District, and then only when said permit is countersigned by the coroner of said District, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the coroner of said District. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683.)

#### § 27-126 [5: 96]. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of this chapter shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than two hundred dollars, or by imprisonment for not more than ninety days, or both. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684.)

#### CROSS REFERENCE

Unlawful traffic in dead bodies, grave robbery, penalty, §§ 2-206, 22-3103.

#### § 27-127 [5: 97]. Prosecutions.

Prosecutions hereunder shall be in the police court of the District of Columbia, in the name of said District: *Provided*, That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said police court. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685.)

#### § 27-128 [5: 98]. Disinterment by order of court.

Nothing in this chapter shall be construed to interfere with or prevent the disinterment of any body when such disinterment is ordered by one of the justices of the District Court of the United States for the District of Columbia, or by the coroner of said district, after due notice to the Commissioners of the District of Columbia. The provisions hereof shall not be held to interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901,

31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686.)

#### AMENDMENT

The 1902 amendment struck out the words "for judicial purposes" and inserted in lieu thereof the words "after due notice to the Commissioners of the District of Columbia."

#### CROSS REFERENCE

See note to § 27-118.

#### NOTES TO DECISIONS

##### POST-MORTEM EXAMINATIONS

It was not error to admit testimony relative to the disinterment and post-mortem examination of the body of the deceased, and it was unnecessary that notice should be given the defendant of the intention on the part of the government to make the investigation. Nor is it material whether or not there was full compliance with this section. *Laney v. United States* (54 App. D. C. 56, 294 Fed. 412).

#### § 27-129 [20: 1211]. Public crematory—Cremation required in certain cases.

Whenever the dead body of any person who has died from smallpox, Asiatic cholera, typhus fever, the plague, leprosy, glanders, scarlet fever, diphtheria, or epidemic cerebro-spinal meningitis comes into the custody of any officer, employee, or agent of the District of Columbia to be disposed of at public expense, the said officer, employee, or agent shall cause said body to be incinerated. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1.)

#### § 27-130 [20: 1212]. Establishment of crematory—Rules and regulations—Fees.

The Commissioners of the District of Columbia are authorized and directed to operate on reservation thirteen, commonly known as the Washington Asylum grounds, in the city of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that can not, except at public expense, be disposed of within a reasonable time after death, and for the incineration of such other bodies as may be presented for that purpose by the persons having custody thereof. Said Commissioners are hereby authorized to make and enforce all rules necessary for the proper maintenance and operation of said crematorium, and to prescribe and collect for the incineration of bodies not necessarily disposed of at public expense fees in such amounts as may be required to defray the cost of incineration: *Provided*, That in any case the Commissioners may, by special order, waive or reduce the usual charges whenever, in the opinion of said Commissioners, to enforce such charges would be burdensome or oppressive upon the person or persons responsible for the disposal of the remains. All fees collected under the provisions of this section shall be paid to the collector of taxes of the District of Columbia, and be deposited by him in the Treasury of the United States wholly to the credit of the District of Columbia. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

#### COMPILER'S NOTE

Relative to the collection and crediting of fees, acts 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of

the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis \* \* \*. After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States

in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, \$9,000,000 is appropriated out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

§ 27-131 [20: 1213]. Act for promotion of anatomical science not affected by crematory law.

Nothing in sections 27-129 to 27-131 shall be construed as repealing or in any way modifying any of the provisions of sections 2-201 to 2-209. (Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3.)



## TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Chap.		Sec.
1.	Negotiable instruments—Form and interpretation.....	28-101
2.	Consideration.....	28-201
3.	Negotiation.....	28-301
4.	Rights of holder.....	28-401
5.	Liabilities of parties.....	28-501
6.	Presentment for payment.....	28-601
7.	Notice of dishonor.....	28-701
8.	Discharge of negotiable instruments.....	28-801
9.	Bills of exchange.....	28-901
10.	Promissory notes and checks.....	28-1001
11.	Uniform Sales Act—Formation of contract.....	28-1101
12.	Transfer of property as between seller and buyer.....	28-1201
13.	Performance of contract.....	28-1301
14.	Rights of unpaid seller against goods.....	28-1401
15.	Actions for breach of contract.....	28-1501
16.	Interpretation of uniform sales act.....	28-1601
17.	Bulk Sales Law.....	28-1701
18.	Warehouse receipts—Uniform law—Issuance of warehouse receipts.....	28-1801
19.	Obligations and rights of warehousemen upon their rights.....	28-1901
20.	Negotiation and transfer of receipts.....	28-2001
21.	Criminal offenses.....	28-2101
22.	Interpretation.....	28-2201
23.	Fiduciaries—Uniform act.....	28-2301
24.	Bonds and undertakings.....	28-2401
25.	Assignment of choses in action.....	28-2501
26.	Assignments for benefit of creditors.....	28-2601
27.	Interest and usury.....	28-2701
28.	Computation of time.....	28-2801

### Chapter 1.—NEGOTIABLE INSTRUMENTS—FORM AND INTERPRETATION

Sec.		
28-101.	Definitions—Sundays and holidays—Application of the law merchant.	
28-102.	Negotiability—Requirements—Form.	
28-103.	Certainty as to sum—What constitutes.	
28-104.	When promise is unconditional.	
28-105.	Determinable future time—What constitutes.	
28-106.	Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.	
28-107.	Validity and negotiability—Effect of omissions—Seal—Particular money.	
28-108.	Instrument payable on demand.	
28-109.	Instrument payable to order.	
28-110.	Instrument payable to bearer.	
28-111.	Terms—Sufficiency.	
28-112.	Date—Presumption as to.	
28-113.	Antedated or postdated instrument—Validity—Effective date.	
28-114.	When date may be inserted.	
28-115.	Blanks—Authority to complete—Enforceability.	
28-116.	Undelivered incomplete instrument—Validity.	
28-117.	Delivery—When effectual—When presumed.	
28-118.	Construction where instrument is ambiguous.	
28-119.	Liability—Person not signing—Person signing in trade or assumed name.	

Sec.		
28-120.	Signature by agent—Authority.	
28-121.	Liability of agent.	
28-122.	Signature by procuration.	
28-123.	Indorsement by corporation or infant.	
28-124.	Signature forged or without authority.	

### § 28-101 [22: 1]. Definitions—Sundays and holidays—Application of the law merchant.

In chapters 1-10 of this title unless the context otherwise requires—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counterclaim and set-off.

“Bank” includes any person or association of persons carrying on the business of banking, whether incorporated or not.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “note” means negotiable promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

“Indorsement” means an indorsement completed by delivery.

“Instrument” means negotiable instrument.

“Issue” means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

The person “primarily” liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are “secondarily” liable.

In determining what is a “reasonable time” or an “unreasonable time” regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

Where the day or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

In any case not provided for in chapters 1-10 of this title the rules of the law merchant shall govern. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1304.)

#### COMPILER'S NOTE

Chapters 1-10 of this title refer to the chapter of the 1901 act which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28-410, 28-920, 28-1008 to 28-1010, and the cross reference should not be read to include these sections.



## STATUTORY REFERENCES

Bills of lading, U. S. C., title 49, ch. 4.  
 Blue Sky Law or Sale of Securities Acts, U. S. C., title 15, ch. 2A.

## § 28-102 [22: 2]. Negotiability—Requirements—Form.

An instrument to be negotiable must conform to the following requirements:

First. It must be in writing and signed by the maker or drawer.

Second. It must contain an unconditional promise or order to pay a certain sum in money.

Third. It must be payable on demand or at a fixed or determinable future time.

Fourth. It must be payable to order or to bearer; and,

Fifth. Where the instrument is addressed to a drawee he must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1305.)

## NOTES TO DECISIONS

## POSTAL MONEY ORDERS

Postal money orders are not negotiable instruments. *Jaselli v. Riggs Nat. Bank* (36 App. D. C. 159, 31 L. R. A. (N. S.) 763, Ann. Cas. 1912C, 119).

## § 28-103 [22: 3]. Certainty as to sum—What constitutes.

The sum payable is a sum certain within the meaning hereof, although it is to be paid—

First. With interest; or

Second. By stated instalments; or,

Third. By stated instalments, with a provision that upon default in payment of any instalment or of interest the whole shall become due; or

Fourth. With exchange, whether at a fixed rate or at the current rate; or,

Fifth. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. (Mar. 3, 1901, 31 Stat. 1395, ch. 854, § 1306.)

## § 28-104 [22: 4]. When promise is unconditional.

An unqualified order or promise to pay is unconditional within the meaning hereof, though coupled with—

First. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or,

Second. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1307.)

## NOTES TO DECISIONS

## INDORSEMENTS

Following indorsements were not of such nature as to destroy negotiability by being notice that promise to pay was conditional.

"As collateral for Loan, \$7,225.00.

"J. P. M.

"LOS ANGELES, CAL. — 192—.

"For value received — hereby grant and assign the within note together with all rights accrued or to accrue under deed of trust securing same, so far as same relates to this note, and waive presentment, demand, notice, protest, and notice of protest." *Seaside Nat. Bank v. Allen* (35 Ariz. 302, 277 Pac. 63).

## UNCONDITIONAL PROMISE TO PAY

Unless changed by statute, the rule is that to be negotiable the instrument must be payable at all events and unconditionally. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797); *Rector v. Strauss* (134 Ark. 374, 203 S. W. 1024).

## § 28-105 [22: 5]. Determinable future time—What constitutes.

An instrument is payable at a determinable future time, within the meaning hereof, which is expressed to be payable—

First. At a fixed period after date or sight; or,

Second. On or before a fixed or determinable future time specified therein; or,

Third. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1308.)

## NOTES TO DECISIONS

## EXTENSION OF MATURITY

Extension of maturity of notes is not invalid because extension slip was not signed by payee or payee's transferee who permitted the payee to retain possession of notes, as the maker and payee agreed to the extension and were bound. *Counselman v. Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707, cert. den. 296 U. S. 650, 80 L. Ed. 463, 56 Sup. Ct. 310).

## § 28-106 [22: 6]. Negotiability—Effect of additional provisions—Promise to do any act in addition to promise of payment.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

First. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or,

Second. Authorizes a confession of judgment if the instrument be not paid at maturity; or,

Third. Waives the benefit of any law intended for the advantage or protection of the obligor; or,

Fourth. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1309.)

## NOTES TO DECISIONS

## SALE OF COLLATERAL SECURITIES

An agreement in a promissory note, the payment of which is secured by collateral securities, that on sale of the securities for default on the part of the maker, the holder of the note may become purchaser, is valid, and the holder's agent may purchase securities for his principal. *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

## § 28-107 [22: 7]. Validity and negotiability—Effect of omissions—Seal—Particular money.

The validity and negotiable character of an instrument are not affected by the fact that—

First. It is not dated; or,

Second. Does not specify the value given, or that any value has been given therefor; or,



- Third. Does not specify the place where it is drawn or the place where it is payable; or,
  - Fourth. Bears a seal; or,
  - Fifth. Designates a particular kind of current money in which payment is to be made.
- But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1310.)

#### NOTES TO DECISIONS

##### SEAL

A note containing the word "seal" printed to the right and directly in line with maker's signature is a sealed instrument notwithstanding the note contained no indication that the maker adopted printed seal, as regards question of limitation. *Wells v. Atropa Corp.* (65 App. D. C. 281, 82 Fed. (2d) 837).

#### § 28-108 [22: 8]. Instrument payable on demand.

An instrument is payable on demand—

- First. Where it is expressed to be payable on demand, or at sight, or on presentation; or,
- Second. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. (Mar. 3, 1901, 31 Stat. 1396, ch. 854, § 1311.)

#### § 28-109 [22: 9]. Instrument payable to order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

- First. A payee who is not maker, drawer, or drawee; or,
  - Second. The drawer or maker; or,
  - Third. The drawee; or,
  - Fourth. Two or more payees jointly; or,
  - Fifth. One or some of several payees; or,
  - Sixth. The holder of an office for the time being.
- Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1312.)

#### § 28-110 [22: 10]. Instrument payable to bearer.

The instrument is payable to bearer—

- First. When it is expressed to be so payable; or,
- Second. When it is payable to a person named therein or bearer; or,
- Third. When it is payable to the order of a fictitious or nonexistent person and such fact was known to the person making it so payable; or,
- Fourth. When the name of the payee does not purport to be the name of any person; or,
- Fifth. When the only or last indorsement is an indorsement in blank. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1313.)

#### NOTES TO DECISIONS

##### INDORSEMENT IN BLANK

Sale of notes indorsed in blank—extension by maker without notice of sale—innocent purchaser acquires superior title. *Counselman v. Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707, cert. den. 296 U. S. 650, 80 L. Ed. 463, 56 Sup. Ct. 310).

When promissory notes were indorsed in blank by payee to a holder for value, it had the effect of making them bearer paper, and the negotiability of the notes was not destroyed by the execution of extension slips by the owner and holder of property which was covered by trust deed securing the notes, and the bank, who had possession of notes which were fraudulently delivered to them by holder's agent as security for his own debt, had title to notes superior to that of the holder. *Ragan v. Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

##### NEGOTIABLE UPON DELIVERY

Notes payable to bearer are negotiable upon delivery. *Commercial Nat. Bank v. McCandlish* (57 App. D. C. 378, 23 Fed. (2d) 986).

#### § 28-111 [22: 11]. Terms—Sufficiency.

The instrument need not follow the language herein employed, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1314.)

#### § 28-112 [22: 12]. Date—Presumption as to.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1315.)

#### § 28-113 [22: 13]. Antedated or postdated instrument—Validity—Effective date.

The instrument is not invalid for the reason only that it is antedated or postdated: *Provided*, That this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1316.)

#### § 28-114 [22: 14]. When date may be inserted.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1317.)

#### § 28-115 [22: 15]. Blanks—Authority to complete—Enforceability.

Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands,



and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. (Mar. 3, 1901, 31 Stat. 1397, ch. 854, § 1318.)

#### NOTES TO DECISIONS

##### ERASURES AND SUBSTITUTIONS

Although one is given permission to fill blanks in a note, he cannot subsequently recover it and erase material words and substitute and interline others. *Ofenstein v. Bryan* (20 App. D. C. 1).

Authority to fill blank notes does not give additional authority to change the terms by erasure or interlineation. *National Capital Bank v. Bryan* (20 App. D. C. 26).

##### MATERIAL ALTERATION

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein v. Bryan* (20 App. D. C. 1).

#### § 28-116 [22: 16]. Undelivered incomplete instrument—Validity.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1319.)

#### § 28-117 [22: 17]. Delivery — When effectual — When presumed.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him, so as to make them liable to him, is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1320.)

#### NOTES TO DECISIONS

##### PRESUMPTION OF TRANSFER OF TITLE

Transfer of possession of a negotiable instrument is presumably a transfer of title, and especially is this true when the transfer is made to one who is not a debtor or is under no obligation to receive or pay it. *Lee v. Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

#### § 28-118 [22: 18]. Construction where instrument is ambiguous.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

First. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or

uncertain, reference may be had to the figures to fix the amount.

Second. Where the instrument provides for the payment of interest without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

Third. Where the instrument is not dated it will be considered to be dated as of the time it was issued.

Fourth. Where there is conflict between the written and printed provisions of the instrument, the written provisions prevail.

Fifth. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

Sixth. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

Seventh. Where an instrument containing the words, "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1321.)

#### NOTES TO DECISIONS

##### PAROL EVIDENCE

In absence of fraud, accident, or mistake, parol evidence of an oral agreement alleged to have been made at the time of drawing, making, or indorsing a bill or note cannot be permitted to vary, qualify, or contradict, or to add to or subtract from, the absolute terms of the written contract. *Hutchins v. Langley* (27 App. D. C. 234).

#### § 28-119 [22: 19]. Liability—Person not signing—Person signing in trade or assumed name.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1322.)

#### § 28-120 [22: 20]. Signature by agent—Authority.

The signature of any party may be made by a duly-authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1323.)

#### § 28-121 [22: 21]. Liability of agent.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized, but the mere addition of words describing him as an agent or as filling a representative character without disclosing his principal does not exempt him from personal liability. (Mar. 3, 1901, 31 Stat. 1398, ch. 854, § 1324.)

#### NOTES TO DECISIONS

##### PRESUMPTION OF AGENCY

Under the statute, the instrument creates a presumption of agency which may be rebutted by competent proof. *Eistinger v. E. J. Murphy Co.* (52 App. D. C. 197, 285 Fed. 931).



Signer is not liable if he was duly authorized, but mere addition of words describing him as agent does not exempt him from liability. There is a presumption that an acceptance of a draft on an individual described as agent, is the act of the agent, but it may be rebutted by competent proof. *Eisinger v. E. J. Murphy Co.* (52 App. D. C. 197, 285 Fed. 931).

#### § 23-122 [22: 22]. Signature by procuration.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1325.)

#### § 23-123 [22: 23]. Indorsement by corporation or infant.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1326.)

### NOTES TO DECISIONS

#### ACCOMMODATION INDORSEMENT

Whether trading corporation had implied power to make indorsement of negotiable paper for accommodation solely, it is not necessary to consider, but assuming the want of power, the defense is unavailable where the party acting upon the faith of that indorsement had no notice of the fact, as its effect was, nevertheless, to pass the property therein. *Willard v. Crook* (21 App. D. C. 237).

#### OMISSION OF WORD

Omission of word "by" between title of corporation, and officer acting for it in the indorsement, is immaterial. *Clark v. Read* (12 App. D. C. 343).

#### SEAL OF CORPORATION

Impression of the seal of a corporation upon an instrument otherwise negotiable, especially when such impression is in connection with an indorsement of the note by such corporation, does not of itself suffice to restrain the negotiability of the paper or to convert it into a specialty. *Clark v. Read* (12 App. D. C. 343).

#### § 23-124 [22: 24]. Signature forged or without authority.

Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1327.)

#### CROSS REFERENCE

Liability of bank or trust company on forged, altered, or raised check, §§ 23-1008 to 23-1010.

### NOTES TO DECISIONS

#### ACCEPTANCE OF FORGED PAPER

If one accepts forged paper purporting to be his own and pays it to a holder for value, the Supreme Court has said that it is undoubtedly true as a general rule of commercial law that he cannot recue the payment. What he has done amounts to an adoption of the paper as genuine. He is presumed to know his own signature. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

#### BILL PAID UPON PRESENTMENT

Principle applies as well to the case of a bill paid upon presentment as to one accepted and afterwards paid. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

#### FORGERY AGAINST UNITED STATES

United States cannot recover money paid on draft that has forged signature of one of its consuls, where the defendant has not been guilty of negligence so as to contribute to the fraud. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

#### HISTORICAL

The principle established by *Price v. Neale* (3 Burrows, 1354), decided in 1762, has been incorporated into uniform Negotiable Instruments Act, which has been adopted in the District of Columbia. That act provides that the acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance and admits "the existence of the drawer, the genuineness of his signature, his capacity and authority to draw the instrument." As payment is equivalent to acceptance, the United States under the act admitted the genuineness of the drawer's signature if the bill was negotiable. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

#### LIABILITY OF BANK

Liability of bank for payment of check on forged indorsement. *Central Nat. Bank v. National Met. Bank* (31 App. D. C. 391, 17 L. R. A. (N. S.) 520).

Bank accepting indorsed check without requiring identification of payee's signature, which was in fact forged, is liable to drawee bank on guaranty of prior indorsements. *District Nat. Bank v. Washington Loan & Trust Co.* (62 App. D. C. 193, 65 Fed. (2d) 831).

When one bank received money from a second bank on checks to husband and wife which it had acquired through forged indorsements and which under the Negotiable Instruments Law were legally uncollectible, the conduct of the second bank in delivering the checks to the husband did not, in the circumstances, preclude it from setting up the forgery of the indorsement. *City Bank v. Hamilton Nat. Bank* (71 App. D. C. 225, 103 Fed. (2d) 588).

*Price v. Neale* goes upon the same theory as do those cases which hold that a bank is bound to know its customer's signature, and has no remedy where it has paid or certified a forged check to a bona fide holder for value. *United States v. Bank of New York Nat. Banking Assn.* ((C. C. A. 2), 219 Fed. 648, L. R. A. 1915D, 797).

### Chapter 2.—CONSIDERATION

#### Sec.

- 28-201. Presumption of valuable consideration.
- 28-202. What is value.
- 28-203. Who is holder for value.
- 28-204. Holder of lien on instrument is holder for value.
- 28-205. Absence or failure of consideration is defense.
- 28-206. "Accommodation parties" defined—Liability.

#### § 23-201 [22: 31]. Presumption of valuable consideration.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1328.)

### NOTES TO DECISIONS

#### BURDEN OF PROOF

When defendant alleged want of consideration for the note, this did not impose upon the plaintiff the burden of proof. *Towles v. Tanner* (21 App. D. C. 530).

If, upon proof of fraud or illegality in the inception of the negotiable paper, the indorsee or transferee thereof cannot avail himself of the presumption of bona fide ownership, certainly as between the original parties



thereto, upon proof of want or failure of consideration, the burden is on the plaintiff to prove by a preponderance of the evidence, without the aid of the presumption of consideration, that he is a holder for value. *Holley v. Smalley* (50 App. D. C. 178, 269 Fed. 694).

#### PRESUMPTION REBUTTABLE

When the plaintiff introduced the note and rested, he had made a prima facie case which, if unchallenged, would have been sufficient to sustain a verdict and judgment in his favor. This amounts, however, to a mere legal presumption, which disappears when confronted by facts setting up either absence or failure of consideration. *Holley v. Smalley* (50 App. D. C. 178, 269 Fed. 694).

Where the consideration for a note was the surrender of certain prior notes, which the payee failed to do, there was a complete failure of consideration for the note first mentioned. *Holley v. Smalley* (50 App. D. C. 178, 269 Fed. 694).

#### PRIMA FACIE EVIDENCE

As the consideration is presumed, evidence to establish a consideration is not required. *Towles v. Tanner* (21 App. D. C. 530).

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. *Towles v. Tanner* (21 App. D. C. 530).

Plaintiff made a prima facie case by the authentication and introduction of the note against the maker, see § 28-205 (31 Stat. 1399, ch. 854, § 1332). *Kiess v. Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

§ 28-202 [22: 32]. What is value.

Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1329.)

#### NOTES TO DECISIONS

##### ASSUMPTION OF LIABILITY

Assumption of a liability at the request of the promisor is a valuable consideration, as, for example, a guaranty of the promisor's debt. *Commercial Nat. Bank v. McCandlish* (57 App. D. C. 378, 23 Fed. (2d) 986).

##### EXTENSION OF TIME

When note was given to indorser in exchange for six months' extension and a previous note to bank, for which the indorser gave his own note to bank, which turned over to the indorser the makers' original note for collection, it was supported by consideration and the bank was estopped from making claim on original note. *McNeill v. Lilly* (65 App. D. C. 210, 82 Fed. (2d) 620).

§ 28-203 [22: 33]. Who is holder for value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1330.)

#### NOTES TO DECISIONS

##### HOLDER FOR VALUE

A promissory note in the hands of a bona fide purchaser for value without notice is valid in District of Columbia even though it is made upon a gambling consideration. *Wirt v. Stubblefield* (17 App. D. C. 283).

"One who holds a negotiable note taken before maturity as collateral security for a preexisting debt, is a holder for value." *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218, cert. den. 242 U. S. 637, 61 L. Ed. 540, 37 Sup. Ct. 21).

§ 28-204 [22: 34]. Holder of lien on instrument is holder for value.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1331.)

§ 28-205 [22: 35]. Absence or failure of consideration is defense.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1332.)

#### NOTES TO DECISIONS

##### DEFENSES

Threat to prosecute son is sufficient duress and is good defense on promissory note. *O'Toole v. Lamson* (41 App. D. C. 276).

No particular sanctity attaches to a promissory note and is subject, at the suit of the original payee, to any defense available against the enforcement of a written contract. *McReynolds v. National Woodworking Co.* (58 App. D. C. 197, 26 Fed. (2d) 975).

##### FAILURE OF CONSIDERATION

There was no evidence from which a jury could have concluded that there was an absence of consideration, as the record did not show evidence that wife did not give her note in exchange for the husband's or that it should be substituted for husband's note, or that she gave note only as security. *Kiess v. Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

##### FALSE AND FRAUDULENT REPRESENTATIONS

Although contract is in writing and its terms cannot be varied by parol evidence, it is admissible to show evidence of false and fraudulent representations made to induce the contract as to one of original parties or one substituted for the purpose of excluding the defense of fraud. *First Nat. Bank v. Fox* (40 App. D. C. 430).

##### PARTIAL FAILURE OF CONSIDERATION

A partial failure of consideration would be a defense pro tanto to the note which was given in place of prior notes which he had signed as an indorser, and when he was only liable on part of the prior notes. *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

Partial failure of consideration is a defense pro tanto. *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

##### SUBSTITUTION OF NOTES

Surrender of one note and the taking of another in substitution therefor is a valid consideration for the latter, and the fact that no consideration moves to the maker of the substituted note is immaterial. *Kiess v. Baldwin* (67 App. D. C. 147, 90 Fed. (2d) 392).

§ 28-206 [22: 36]. "Accommodation parties" defined—Liability.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1333.)



## NOTES TO DECISIONS

## MARRIED WOMAN

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania, is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for her husband. *Kiess v. Baldwin* (64 App. D. C. 66, 74 Fed. (2d) 470).

## OBLIGATION OF ACCOMMODATION MAKER

Obligation of an accommodation maker, though made without value received by him, is none the less an obligation recognized in law to be supported by a valid consideration. *Chase v. Du Pont Nat. Bank* ((C. C. A. 3), 277 Fed. 235).

## Chapter 3.—NEGOTIATION

## Sec.

- 28-301. Definition—Bearer instrument—Order instrument.
- 28-302. Indorsement—How made—Sufficiency.
- 28-303. Indorsement must be of entire instrument.
- 28-304. Kinds of indorsement.
- 28-305. Special indorsement—Indorsement in blank.
- 28-306. Blank indorsement may be converted into special indorsement.
- 28-307. Restrictive indorsement.
- 28-308. Effect of restrictive indorsement—Rights of indorsee.
- 28-309. Qualified indorsement.
- 28-310. Conditional indorsement.
- 28-311. Special indorsement—Instrument payable to bearer.
- 28-312. Indorsement by joint payees not partners.
- 28-313. Payable to cashier.
- 28-314. Payee's name misspelled.
- 28-315. Indorsement in representative capacity.
- 28-316. Presumption of negotiation before maturity.
- 28-317. Place of indorsement—Presumption.
- 28-318. Negotiable instrument continues as such.
- 28-319. Striking out indorsements.
- 28-320. Transfer without indorsing—Time of taking effect.
- 28-321. Transfer back to prior party—Rights of intervening party.

§ 28-301 [22: 41]. Definition—Bearer instrument—Order instrument.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder, completed by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1334.)

## NOTES TO DECISIONS

## INDORSEMENT AND DELIVERY

When party took title by delivery under the blank indorsement of the payee, its effect was to make the note payable to bearer, and pass by delivery. *Jerman v. Edwards* (29 App. D. C. 535).

It is essential for the negotiation of note payable to order that there be an indorsement and delivery. *McKee v. District Nat. Bank* (38 App. D. C. 465).

## WRONGFUL DELIVERY

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co. v. Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

§ 28-302 [22: 42]. Indorsement — How made — Sufficiency.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The

signature of the indorser, without additional words, is a sufficient indorsement. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1335.)

§ 28-303 [22: 43]. Indorsement must be of entire instrument.

The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorseees severally, does not operate as a negotiation of the instrument; but where the instrument has been paid in part it may be indorsed as to the residue. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1336.)

§ 28-304 [22: 44]. Kinds of indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1337.)

§ 28-305 [22: 45]. Special indorsement—Indorsement in blank.

A special indorsement specifies the person to whom or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery. (Mar. 3, 1901, 31 Stat. 1399, ch. 854, § 1338.)

## NOTES TO DECISIONS

## EFFECT

A check after having been endorsed in blank may be negotiated by its holder without further endorsement. *Milton v. United States* (71 App. D. C. 394, 110 Fed. (2d) 556).

§ 28-306 [22: 46]. Blank indorsement may be converted into special indorsement.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1339.)

§ 28-307 [22: 47]. Restrictive indorsement.

An indorsement is restrictive which either—

First. Prohibits the further negotiation of the instrument; or,

Second. Constitutes the indorsee the agent of the indorser; or,

Third. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1340.)

§ 28-308 [22: 48]. Effect of restrictive indorsement—Rights of indorsee.

A restrictive indorsement confers upon the indorsee the right—

First. To receive payment of the instrument.

Second. To bring any action thereon that the indorser could bring.



Third. To transfer his rights as such indorsee where the form of the indorsement authorizes him to do so.

But all subsequent indorseees acquire only the title of the first indorsee under the restrictive indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1341.)

#### § 28-309 [22: 49]. Qualified indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1342.)

#### § 28-310 [22: 50]. Conditional indorsement.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1343.)

#### § 28-311 [22: 51]. Special indorsement — Instrument payable to bearer.

Where an instrument payable to bearer is indorsed specially it may, nevertheless, be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1344.)

#### § 28-312 [22: 52]. Indorsement by joint payees not partners.

Where an instrument is payable to the order of two or more payees or indorseees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1345.)

#### § 28-313 [22: 53]. Payable to cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1346.)

#### § 28-314 [22: 54]. Payee's name misspelled.

Where the name of a payee or indorsee is wrongly designated or misspelled he may indorse the instrument as therein described, adding, if he think fit, his proper signature. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1347.)

#### § 28-315 [22: 55]. Indorsement in representative capacity.

Where any person is under obligation to indorse in a representative capacity he may indorse in such terms as to negative personal liability. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1348.)

#### § 28-316 [22: 56]. Presumption of negotiation before maturity.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. (Mar. 3, 1901, 31 Stat. 1400, ch. 854, § 1349.)

#### § 28-317 [22: 57]. Place of indorsement—Presumption.

Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1350.)

#### § 28-318 [22: 58]. Negotiable instrument continues as such.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1351.)

#### § 28-319 [22: 59]. Striking out indorsements.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out and all indorsers subsequent to him are thereby relieved from liability on the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1352.)

### NOTES TO DECISIONS

#### IN GENERAL

This provision of the code is but declaratory of the law as it was recognized before the adoption of the Negotiable Instruments Act. *Jerman v. Edwards* (29 App. D. C. 535).

#### RESTRICTIVE SUBSEQUENT INDORSEMENT

One is entitled to strike out a subsequent indorsement when he does not claim title thereunder, and when there is no defense to the note as against anyone whose name appears on it, it is immaterial whether or not such subsequent indorsement is restrictive. *Jerman v. Edwards* (29 App. D. C. 535).

#### § 28-320 [22: 60]. Transfer without indorsing—Time of taking effect.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1353.)

#### § 28-321 [22: 61]. Transfer back to prior party—Rights of intervening party.

Where an instrument is negotiated back to a prior party such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1354.)

### Chapter 4.—RIGHTS OF HOLDER

Sec.  
28-401. May sue in own name—Discharge of instrument by payment.



Sec.

- 28-402. "Holder in due course" defined.  
 28-403. Holder in due course—Demand instrument.  
 28-404. Notice before full amount is paid.  
 28-405. Defective title—Definition.  
 28-406. Notice of infirmity—Sufficiency.  
 28-407. Rights of holder in due course.  
 28-408. Rights of holder other than holder in due course.  
 28-409. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.  
 28-410. Lost or miscarried bill of exchange—Drawer to issue duplicate.

§ 28-401 [22: 71]. May sue in own name—Discharge of instrument by payment.

The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1355.)

## NOTES TO DECISIONS

### HOLDER BY PURCHASE AFTER MATURITY

Where a stranger acquires a note from a holder authorized to sell, the transaction, either upon proof of the stranger's intention to purchase or upon the presumption of fact that he intended a purchase, will be held to be a purchase rather than a discharge of the note. As purchaser he would succeed to all the rights in the pledged security; and this is true notwithstanding the notes had passed their maturity date. *Lee v. Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

### HOLDER BY PURCHASE BEFORE MATURITY

Plaintiff established a prima facie case of liability by maker of note, when he introduced note and testified that he purchased the note for value before maturity, that the note was due and unpaid, that he was not a party to the note and that was purchased without knowledge of defenses. *Klingstein v. Thomas Circle Cafe* (68 App. D. C. 5, 92 Fed. (2d) 554).

### HOLDER UNDER INDORSEMENT IN TRUST

A legal holder under indorsement in trust may bring suit. *National City Bank v. Bankers Trust Co.* (37 App. D. C. 553).

While an indorsement of promissory note in trust restricts the free circulation of a note, and takes it out of the class known as commercial paper, the indorsee, having the legal title thereto, and having authority to receive payment thereof, may bring suit in his own name to enforce payment. *National City Bank v. Bankers Trust Co.* (37 App. D. C. 553).

### HOLDER UNDER RESTRICTIVE INDORSEMENT

An indorsee under a restrictive indorsement has the right to bring any action thereon that the indorser could bring. *McKee v. District Nat. Bank* (38 App. D. C. 465).

§ 28-402 [22: 72]. "Holder in due course" defined.

A holder in due course is a holder who has taken the instrument under the following conditions:

First. That it is complete and regular upon its face.

Second. That he became the holder of it before it was over due, and without notice that it had been previously dishonored, if such was the fact.

Third. That he took it in good faith and for value.

Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1356.)

## NOTES TO DECISIONS

### IN GENERAL

Provisions under this section refer only to negotiable instruments. *Arnett v. Clack* (122 Ariz. 409, 198 Pac. 127).

### FINANCE COMPANY

Finance company engaged in business of discounting trade acceptances, when purchasing certificate of deposit after inquiry of issuing bank's cashier, is holder in due course. *International Finance Corp. v. Peoples Bank* ((D. C.-W. Va.), 27 Fed. (2d) 523).

### QUESTION FOR JURY

Evidence whether plaintiff was an innocent holder for value, of promissory note sued on, was properly submitted to the jury. *Edwards v. Fox* (40 App. D. C. 439).

### TRANSFEE OF FRAUDULENT AGENT

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan v. Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

### WANT OF CONSIDERATION

Defendant, in addition to the fact that the discount was applied, must also allege that the money, at the time of the notice, remained in the bank to the credit of the discounter. If it has been paid to him or his order, the bank necessarily becomes a holder for value. *Richards v. Street* (31 App. D. C. 427).

### WRONGFUL DELIVERY

When bank had possession of note indorsed in blank which belonged to another, and wrongly transferred it to another's file, the executor of the latter is not holder in due course for the note was not negotiated. *Washington Loan & Trust Co. v. Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

§ 28-403 [22: 73]. Holder in due course—Demand instrument.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1357.)

§ 28-404 [22: 74]. Notice before full amount is paid.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1358.)

§ 28-405 [22: 75]. Defective title—Definition.

The title of a person who negotiates an instrument is defective within the meaning hereof when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear or other unlawful means, or for any illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1359.)

## NOTES TO DECISIONS

### BURDEN OF PROOF

When it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course.



*Bowen v. Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

#### § 28-406 [22: 76]. Notice of infirmity—Sufficiency.

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect or knowledge of such facts that his action in taking the instrument amounted to bad faith. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1360.)

#### NOTES TO DECISIONS

##### ACTUAL NOTICE REQUIRED

Party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of the purchaser. That result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance; and the burden of proof lies on the assailant of the title. *Hutchins v. Langley* (27 App. D. C. 234).

Fact that deed of trust was released by trustees before maturity of promissory note secured by it will not be sufficient to charge the purchaser for value of subsequent note secured by a new deed of trust and upon which there was an indorsement of part payment, with constructive notice that the first note had not been paid, especially if he bought his note a year after release of first deed of trust and recording of its release, and at time when note it secured, if not paid was long overdue. *Martin v. Poole* (36 App. D. C. 281).

When promissory note was obtained from the maker by payee, by fraud and deception, nothing short of guilty knowledge of fraud and deception by subsequent indorsee for value will defeat his right to recover on it, as mere suspicion or even gross negligence is not sufficient. *Hazen v. Van Senden* (43 App. D. C. 161).

To constitute notice of an infirmity in the instrument, or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect; or knowledge of such facts that his action in taking the instrument amounted to bad faith. *Washington Loan & Trust Co. v. Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

##### INDORSEMENT IN BLANK

When indorsing note in blank and delivering it back to the maker, the payee makes the maker his agent and one who receives the note from the latter in good faith, for value, receives it in due course and may recover. *Howell v. Commercial Nat. Bank* (40 App. D. C. 370).

A note is not "negotiated" which is indorsed in blank and in possession of bank which purchased it for customer—and left in bank for safekeeping. *Washington Loan & Trust Co. v. Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

##### NEGLIGENCE IN OBTAINING NOTICE

To effect purchaser for value with constructive notice, it must appear that his failure to obtain actual notice was due to gross or culpable negligence. *Martin v. Poole*, (36 App. D. C. 281).

##### SUBSEQUENT PURCHASER WITHOUT NOTICE

When notes were due in 1931 and payable to bank's cashier and were indorsed by him in blank without recourse and sold to one who let bank retain possession of notes, and maker without knowledge of sale executed extension slip extending maturity of notes to 1934, a subsequent purchase of notes for value in 1932 by one without notice or knowledge of preceding sale and not noticing that part of extension slip to be signed by the holder, but had not been signed, invested title to notes in subsequent purchaser, superior to claim of first purchaser. *Counselman v. Pitzer* (65 App. D. C. 71, 79 Fed. (2d) 707).

#### § 28-407 [22: 77]. Rights of holder in due course.

A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (Mar. 3, 1901, 31 Stat. 1401, ch. 854, § 1361.)

#### NOTES TO DECISIONS

##### CONFLICT OF LAWS

British statutes of 16 Car. 2, ch. 8, and 9 Anne, ch. 14 (§§ 16-701 to 16-705) against gaming, so far as they might or would, if in force, affect the validity of the negotiable instruments which are within the provisions of the Negotiable Instruments Law, to the extent that they are so inconsistent or repugnant to the Negotiable Instruments Act, are no longer, as to negotiable instruments, in force in District of Columbia. *Wirt v. Stubblefield* (17 App. D. C. 283).

##### DEFENSES

Promissory note although made upon a gambling consideration is good in the hands of a bona fide purchaser for value without notice. *Wirt v. Stubblefield* (17 App. D. C. 283).

Borrowers of money at usurious rates are not entitled to relief as against innocent holders for value. *Whipp v. Glueck* (61 App. D. C. 118, 58 Fed. (2d) 523).

When holder of notes executed extension slips, which were held under indorsements in blank, it did not give notice to subsequent transferee from fraudulent agent of the holder, who had transferred the notes to the bank as security for his own debt, and the transferee remained a good-faith holder. *Ragan v. Wardell* (67 App. D. C. 222, 91 Fed. (2d) 253).

##### HOLDER WITHOUT NOTICE OF DEFECTS

A bona fide holder of a negotiable instrument, for a valuable consideration, without any notice of facts which impeach its validity, as between antecedent parties, if he takes it under an indorsement made before the same becomes due, holds the title unaffected by these facts, and may recover thereon, although, as between the antecedent parties, the transaction may be without any legal validity. *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218, cert. den. 242 U. S. 637, 61 L. Ed. 540, 37 Sup. Ct. 21).

#### § 28-408 [22: 78]. Rights of holder other than holder in due course.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1362.)

#### NOTES TO DECISIONS

##### FRAUD

Fraud in inception of note on account of which the consideration fails constitutes a good defense against indorsee after maturity. *Lincoln v. Grant* (47 App. D. C. 475).

##### HOLDER AFTER MATURITY

Indorsee of negotiable note after maturity takes it subject to defenses which affect the instrument and not to matters such as set-offs which arise out of independent transactions between maker and payee. *Lincoln v. Grant* (47 App. D. C. 475).



§ 28-409 [22: 79]. Presumption as to holding in due course—Burden of proof when transferor's title shown defective.

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1363.)

#### NOTES TO DECISIONS

##### BAD FAITH

An averment "that I am credibly informed and believe, and expect to prove at the trial, that the plaintiff became holder of promissory note, if holder at all, in bad faith, and without any belief that it was valid obligation of mine, and that plaintiff did not receive my note in regular course of business," taken in connection with other averments tending to show close intimacy between plaintiff and original payee, as well as knowledge of payee's methods of transacting business, is sufficient to send the case to trial. *Hazen v. Van Senden* (43 App. D. C. 161).

##### BURDEN OF PROOF

Every holder of a negotiable instrument is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. *Washington Loan & Trust Co. v. Cowgill* (66 App. D. C. 89, 85 Fed. (2d) 255).

##### DURESS

As note was obtained by duress, the burden was on the defendant "to prove that he or some person under whom he claims acquired the title as a holder in due course." *O'Toole v. Lamson* (41 App. D. C. 276).

##### PRESUMPTION OF CONSIDERATION AND INDORSEMENT

With the introduction of the notes in evidence, and the admission of the genuineness of the signatures, valuable consideration and indorsement before maturity are presumed. *Catholic University v. Waggaman* (32 App. D. C. 307).

§ 28-410 [22: 81]. Lost or miscarried bill of exchange—Drawer to issue duplicate.

In case any inland bill or bills of exchange shall happen to be lost or miscarried within the time limited for payment of the same, then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are and shall be so delivered giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried, shall be found again. (9-10 Wm. 3, ch. 17, § 3; Kilty Rep., p. 244; Alex. Br. Stat., p. 634; Comp. Stat. D. C., p. 66, § 3.)

##### COMPILER'S NOTE

This section is obsolete and largely inoperative. See compiler's note to § 28-101.

#### Chapter 5.—LIABILITIES OF PARTIES

##### Sec.

- 28-501. Liability of maker.
- 28-502. Liability of drawer.
- 28-503. Liability of acceptor.

##### Sec.

- 28-504. Liability of signer of instrument other than maker, drawer, or acceptor.
- 28-505. Liability of stranger who signs in blank.
- 28-506. Warranties of negotiator by delivery or qualified indorsement.
- 28-507. Warranties of indorser without qualification.
- 28-508. Liability of indorser of instrument negotiable by delivery.
- 28-509. Order in which indorsers are liable.
- 28-510. Liability of agent of undisclosed principal.

§ 28-501 [22: 80]. Liability of maker.

The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1364.)

§ 28-502 [22: 91]. Liability of drawer.

The drawer, by drawing the instrument, admits the existence of the payee and his then capacity to indorse, and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1365.)

§ 28-503 [22: 92]. Liability of acceptor.

The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance, and admits—

First. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

Second. The existence of the payee and his then capacity to indorse. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1366.)

§ 28-504 [22: 93]. Liability of signer of instrument other than maker, drawer, or acceptor.

A person placing his signature upon an instrument otherwise than as a maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1367.)

#### NOTES TO DECISIONS

##### CIRCUMSTANCES OF INDORSEMENT

"The mere fact that he wrote his name on the back of the notes does not show even prima facie that he was a technical indorser. It is important to know when and under what circumstances he wrote his name there. If it was before or near the time the notes were delivered, or after they were delivered, but for the purpose of strengthening the credit of the note, and before the payee had indorsed, he would be a maker, and not entitled to any of the rights or privileges of an indorser." *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366), citing *Chandler & Taylor Co. v. Norwood* (14 App. D. C. 357), *Randle v. Davis Coal Co.* (15 App. D. C. 357).

##### INDORSEMENT IN BLANK

When a person indorses a negotiable note in blank, and sends the instrument forth into commercial channels, stamped with all the indicia of commercial paper, nego-



liable by indorsement or delivery, the mere genuineness of his signature is sufficient, prima facie, to establish liability. *Thompson v. Franklin Nat. Bank* (45 App. D. C. 218).

Party indorsing in blank for the accommodation of maker is liable as indorser, and not as a joint maker. *Bost v. Rezine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670), overruling *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

#### § 28-505 [22: 94]. Liability of stranger who signs in blank.

Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules:

First. If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties.

Second. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

Third. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1368.)

#### CROSS REFERENCE

See notes to § 28-504.

#### § 28-506 [22: 95]. Warranties of negotiator by delivery or qualified indorsement.

Every person negotiating an instrument by delivery or by a qualified indorsement warrants—

First. That the instrument is genuine and in all respects what it purports to be.

Second. That he has a good title to it.

Third. That all prior parties had capacity to contract.

Fourth. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities other than bills and notes. (Mar. 3, 1901, 31 Stat. 1402, ch. 854, § 1369.)

#### § 28-507 [22: 96]. Warranties of indorser without qualification.

Every indorser who indorses without qualification warrants to all subsequent holders in due course—

First. The matters and things mentioned in subdivisions one, two, and three of section 28-506; and  
Second. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1370.)

## NOTES TO DECISIONS

### ADDITIONAL INDORSER

Holders subsequent to forged indorsement, treating the indorsement as genuine and valid, as they were entitled to do, had the right to rely upon the apparent liability of an additional indorser. *Milton v. United States* (71 App. D. C. 394, 110 Fed. (2d) 555).

### OTHER CONTRACTS

A bank is not prohibited from entering into other contracts with a company, maker of note, for future loans, because of its ownership of indorsed notes. *Hannan v. Hardee* (63 App. D. C. 76, 79, 69 Fed. (2d) 394, 397).

### WARRANTY OF PRESENT AND PRIOR INDORSERS

Individual indorser, subsequent to a corporation indorser, was a warranty of the genuineness of the paper of his own title thereto, and of the capacity of all the preceding parties to contract. *Willard v. Crook* (21 App. D. C. 237).

#### § 28-508 [22: 97]. Liability of indorser of instrument negotiable by delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1371.)

## NOTES TO DECISIONS

### FRAUD

In action against indorsers on note for amount due for gasoline and oil purchased from payee, when no evidence was introduced tending to prove that the payee knew of inaccuracy in the marking of its tank truck compartments nor evidence showing amount by which motor service had been overcharged as a result of inaccuracy in markings, and defendants failed to show that payee had any reasons to question the accuracy, it was insufficient for the jury as to question of fraud in obtaining signatures of indorsers. *Public Motor Service v. Standard Oil Co.* (69 App. D. C. 89, 99 Fed. (2d) 124).

#### § 28-509 [22: 98]. Order in which indorsers are liable.

As respects one another indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1372.)

#### § 28-510 [22: 99]. Liability of agent of undisclosed principal.

Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 28-506, unless he discloses the name of his principal and the fact that he is acting only as agent. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1373.)

## Chapter 6.—PRESENTMENT FOR PAYMENT

### Sec.

- 28-601. Necessity for presentment for payment—Tender of payment.
- 28-602. Time for making.
- 28-603. Sufficiency.
- 28-604. Place of presentment.
- 28-605. Instrument must be exhibited—Delivery on payment.
- 28-606. Presentment where instrument payable at bank.
- 28-607. Presentment where principal debtor is dead.
- 28-608. Presentment to persons liable as partners.
- 28-609. Presentment to joint debtors.
- 28-610. When presentment not required to charge drawer.



Sec.

- 28-611. When presentment not required to charge indorser.
- 28-612. When delay in making presentment is excused.
- 28-613. When presentment dispensed with.
- 28-614. When instrument is dishonored by nonpayment.
- 28-615. Right of action on nonpayment.
- 28-616. When negotiable instrument is payable—Holidays.
- 28-617. Determination of time for payment.
- 28-618. Instrument payable at bank is order on bank to pay.
- 28-619. What constitutes payment in due course.

**§ 28-601 [22: 111]. Necessity for presentment for payment—Tender of payment.**

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument, but if the instrument is by its terms payable at a special place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But, except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1374.)

**§ 28-602 [22: 112]. Time for making.**

Where the instrument is not payable on demand presentment must be made on the day it falls due. Where it is payable on demand presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1375.)

**§ 28-603 [22: 113]. Sufficiency.**

Presentment for payment to be sufficient must be made—

First. By the holder or by some person authorized to receive payment on his behalf.

Second. At a reasonable hour on a business day.

Third. At a proper place, as herein defined.

Fourth. To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1376.)

**CROSS REFERENCE**

Presentment by notary public, §§ 1-508, 1-509.

**§ 28-604 [22: 114]. Place of presentment.**

Presentment for payment is made at the proper place—

First. Where a place of payment is specified in the instrument and it is there presented.

Second. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented.

Third. Where no place of payment is specified, and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

Fourth. In any other case if presented to the person to make payment wherever he can be found or if presented at his last known place of business or residence. (Mar. 3, 1901, 31 Stat. 1403, ch. 854, § 1377.)

**§ 28-605 [22: 115]. Instrument must be exhibited—Delivery on payment.**

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1378.)

**§ 28-606 [22: 116]. Presentment where instrument payable at bank.**

Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1379.)

**§ 28-607 [22: 117]. Presentment where principal debtor is dead.**

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1380.)

**§ 28-608 [22: 118]. Presentment to persons liable as partners.**

Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1381.)

**§ 28-609 [22: 119]. Presentment to joint debtors.**

Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1382.)

**§ 28-610 [22: 120]. When presentment not required to charge drawer.**

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1383.)

**§ 28-611 [22: 121]. When presentment not required to charge indorser.**

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1384.)

**§ 28-612 [22: 122]. When delay in making presentment is excused.**

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must



be made with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1385.)

§ 28-613 [22: 123]. When presentment dispensed with.

Presentment for payment is dispensed with—

First. Where, after the exercise of reasonable diligence, presentment as required hereby can not be made.

Second. Where the drawee is a fictitious person.

Third. By waiver of presentment, express or implied. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1386.)

§ 28-614 [22: 124]. When instrument is dishonored by nonpayment.

The instrument is dishonored by nonpayment when—

First. It is duly presented for payment and payment is refused or can not be obtained; or,

Second. Presentment is excused and the instrument is overdue and unpaid. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1387.)

§ 28-615 [22: 125]. Right of action on nonpayment.

Subject to the provisions hereof, when the instrument is dishonored by nonpayment an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1388.)

§ 28-616 [22: 126]. When negotiable instrument is payable—Holidays.

Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon Sunday or a holiday the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. The following days in each year, namely, the first day of January, commonly called New Year's Day; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor's Holiday; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year, shall be holidays in the District for all purposes. Whenever any day set apart as a legal holiday shall fall on Sunday, then and in such case the next succeeding day shall be a holiday; and in such cases and in all cases in which a Sunday and a holiday shall fall on successive days all commercial paper falling due on any of said days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular or business day succeeding. (Mar. 3, 1901, 31 Stat. 1404, ch. 854, § 1389; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

The 1902 amendment struck out the words "within the meaning of this section" in the middle of this paragraph and inserted in lieu thereof the words "for all purposes."

#### NOTES TO DECISIONS

##### SATURDAY HALF-HOLIDAY

Saturday half-holiday not excluded in computing 30 days' notice required under § 1219, D. C. 1901 (§ 45-902). *Ocuppaugh v. Norton* (24 App. D. C. 296); *McCoy v. Duehay* (51 App. D. C. 363, 279 Fed. 1001), citing *Morse v. Brainerd* (42 App. D. C. 448). See also *Swenk v. Nicholls* (39 App. D. C. 350) (in connection with computing time for prosecution of appeals from municipal court).

§ 28-617 [22: 127]. Determination of time for payment.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the date of payment. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1390.)

#### NOTES TO DECISIONS

##### IN GENERAL

This jurisdiction prefers the rule followed in New York and Pennsylvania, which excludes the day on which the cause of action accrues, as a point of time after which the limitation ensues. *Ambrose v. Brown* (42 App. D. C. 25).

§ 28-618 [22: 128]. Instrument payable at bank is order on bank to pay.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1391.)

§ 28-619 [22: 129]. What constitutes payment in due course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1392.)

#### Chapter 7.—NOTICE OF DISHONOR

##### Sec.

- 28-701. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.
- 28-702. Persons who may give notice.
- 28-703. Notice given by agent.
- 28-704. Effect of notice given on behalf of holder.
- 28-705. Effect of notice given by party entitled to give it.
- 28-706. Notice when instrument in hands of agent is dishonored.
- 28-707. Sufficiency of notice.
- 28-708. Form and service of notice.
- 28-709. Notice may be given to party or his agent.
- 28-710. Notice when party dead.
- 28-711. Notice to partners.
- 28-712. Notice to persons jointly liable.
- 28-713. Notice to bankrupt.
- 28-714. Time within which notice must be given.
- 28-715. When notice to be given if parties reside in same place.
- 28-716. When notice to be given if parties reside in different places.
- 28-717. Mailing notice sufficient.
- 28-718. Depositing notice in post office—What constitutes.
- 28-719. Notice to subsequent parties by party notified by holder.



Sec.

- 28-720. Where notice must be sent—Sufficiency of actual notice.
- 28-721. Waiver of notice.
- 28-722. Parties bound by waiver of notice.
- 28-723. Waiver of protest.
- 28-724. When notice dispensed with.
- 28-725. Excuse for delay in giving notice.
- 28-726. When notice to drawer is not required.
- 28-727. When notice to indorser is not required.
- 28-728. Notice of nonpayment—When not necessary.
- 28-729. Omission to give notice of nonacceptance.
- 28-730. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

§ 28-701 [22: 141]. Notice of dishonor must be given to drawer and indorsers—Effect of noncompliance.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1393.)

#### NOTES TO DECISIONS

##### INDORSER

Diligence in notifying indorser of dishonor. *Bost v. Rexine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670).

Failure of indorsee of a note to give notice of the nonpayment of the instalments results in discharging the indorser from liability as to those instalments, but has no other effect as to other instalments. *Roberts v. International Bank* (58 App. D. C. 87, 25 Fed. (2d) 214).

§ 28-702 [22: 142]. Persons who may give notice.

The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1394.)

##### CROSS REFERENCE

Notice by notary public, §§ 1-508, 1-509.

§ 28-703 [22: 143]. Notice given by agent.

Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1395.)

§ 28-704 [22: 144]. Effect of notice given on behalf of holder.

Where notice is given by or on behalf of the holder it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1396.)

§ 28-705 [22: 145]. Effect of notice given by party entitled to give it.

Where notice is given by or on behalf of a party entitled to give notice it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1397.)

§ 28-706 [22: 146]. Notice when instrument in hands of agent is dishonored.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1398.)

§ 28-707 [22: 147]. Sufficiency of notice.

A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1399.)

§ 28-708 [22: 148]. Form and service of notice.

The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. (Mar. 3, 1901, 31 Stat. 1405, ch. 854, § 1400.)

§ 28-709 [22: 149]. Notice may be given to party or his agent.

Notice of dishonor may be given either to the party himself or to his agent in that behalf. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1401.)

§ 28-710 [22: 150]. Notice when party dead.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if, with reasonable diligence, he can be found. If there be no personal representatives, notice may be sent to the last residence or last place of business of the deceased. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1402.)

§ 28-711 [22: 151]. Notice to partners.

Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1403.)

§ 28-712 [22: 152]. Notice to persons jointly liable.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1404.)

§ 28-713 [22: 153]. Notice to bankrupt.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1405.)



§ 28-714 [22: 154]. Time within which notice must be given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused, as herein-after provided, must be given within the time fixed by chapters 1-10 of this title. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1406; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

The 1902 amendment struck out the word "Act" in the last line of this section and inserted in lieu thereof the word "chapter."

"Chapters 1-10 of this title" refer to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28-410, 28-920, 28-1008 to 28-1010, and the cross reference should not be read to include these sections.

§ 28-715 [22: 155]. When notice to be given if parties reside in same place.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

First. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the following day.

Second. If given at his residence, it must be given before the usual hours of rest on the day following.

Third. If sent by mail, it must be deposited in the post office in time to reach him in the usual course on the day following. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1407.)

§ 28-716 [22: 156]. When notice to be given if parties reside in different places.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

First. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter.

Second. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail if it had been deposited in the post office within the time specified in the last subdivision. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1408.)

§ 28-717 [22: 157]. Mailing notice sufficient.

Where notice of dishonor is duly addressed and deposited in the post office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1409.)

§ 28-718 [22: 158]. Depositing notice in post office—What constitutes.

Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the Post Office Department. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1410.)

§ 28-719 [22: 159]. Notice to subsequent parties by party notified by holder.

Where a party receives notice of dishonor he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1411.)

§ 28-720 [22: 160]. Where notice must be sent—Sufficiency of actual notice.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

First. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or,

Second. If he live in one place and have his place of business in another, notice may be sent to either place; or,

Third. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified by chapters 1-10 of this title it will be sufficient, though not sent in accordance with the requirements of this section. (Mar. 3, 1901, 31 Stat. 1406, ch. 854, § 1412; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

The 1902 amendment changed the word "Act" in the last paragraph to "chapter."

"Chapters 1-10 of this title" refer to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28-410, 28-920, 28-1008 to 28-1010, and the cross reference should not be read to include these sections.

§ 28-721 [22: 161]. Waiver of notice.

Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1413.)

#### NOTES TO DECISIONS

##### IN GENERAL

Evidence was admissible as to waiver of notice, and also admissible under the common counts. *Green v. Higgin Mfg. Co.* (44 App. D. C. 186).

§ 28-722 [22: 162]. Parties bound by waiver of notice.

Where the waiver is embodied in the instrument itself it is binding upon all parties, but where it is written above the signature of an indorser it binds him only. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1414.)

§ 28-723 [22: 163]. Waiver of protest.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1415.)

§ 28-724 [22: 164]. When notice dispensed with.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be



given to or does not reach the parties sought to be charged. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1416.)

#### NOTES TO DECISIONS

##### REASONABLE DILIGENCE

Diligence in effort to find indorser's proper address was not shown, by notary, by merely searching through city and telephone directory. *Bost v. Rexine Co.* (56 App. D. C. 34, 8 Fed. (2d) 795, 55 A. L. R. 670).

§ 28-725 [22: 165]. Excuse for delay in giving notice.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate notice must be given with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1417.)

§ 28-726 [22: 166]. When notice to drawer is not required.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

First. Where the drawer and the drawee are the same person.

Second. Where the drawee is a fictitious person or a person not having capacity to contract.

Third. Where the drawer is the person to whom the instrument is presented for payment.

Fourth. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; or,

Fifth. Where the drawer has countermanded payment. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1418.)

§ 28-727 [22: 167]. When notice to indorser is not required.

Notice of dishonor is not required to be given to an indorser in either of the following cases:

First. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.

Second. Where the indorser is the person to whom the instrument is presented for payment; or,

Third. Where the instrument was made or accepted for his accommodation. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1419.)

§ 28-728 [22: 168]. Notice of nonpayment—When not necessary.

Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1420.)

§ 28-729 [22: 169]. Omission to give notice of nonacceptance.

An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1421.)

§ 28-730 [22: 170]. Protest—Not required except on foreign bills of exchange—Original protest as evidence.

Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

The original protest of a notary public, under his hand and official seal, of any bill of exchange, check, or order for nonacceptance or nonpayment, or of any promissory note for nonpayment, stating the presentment by him of such bill of exchange, check, order, or promissory note for acceptance or payment and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to such bill of exchange, promissory note, or check, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given shall be prima facie evidence of the facts therein contained. (Mar. 3, 1901, 31 Stat. 1407, ch. 854, § 1422; Apr. 19, 1920, 41 Stat. 569, ch. 153.)

#### AMENDMENT

The 1920 amendment struck out the words "in the District" which appeared after the words "notary public" in the first sentence of the second paragraph.

#### CROSS REFERENCES

Other provisions concerning protest by notary, § 1-508. Protest generally, § 28-928 et seq.

### Chapter 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS

#### Sec.

28-801. Means of discharge of negotiable instrument.

28-802. Discharge of person secondarily liable.

28-803. Payment by party secondarily liable not a discharge—Further negotiation.

28-804. Discharge by renunciation of rights against party—Except holder in due course.

28-805. Cancellation.

28-806. Alteration—Effect.

28-807. Material alteration—Definition.

§ 28-801 [22: 181]. Means of discharge of negotiable instrument.

A negotiable instrument is discharged—

First. By payment in due course by or on behalf of the principal debtor.

Second. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

Third. By the intentional cancellation thereof by the holder.

Fourth. By any other act which will discharge a simple contract for the payment of money.

Fifth. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1423.)

#### NOTES TO DECISIONS

##### ACCEPTANCE FOR ANTECEDENT DEBT

Acceptance of a negotiable note for an antecedent debt will not extinguish such debt, unless it is expressly agreed that it is received as payment. *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

##### PAYMENT TO PERSON NOT IN POSSESSION

Payment of a promissory note to a person not in possession of it is at the peril of the payor and imposes the



duty of showing by satisfactory evidence that the person to whom payment was made was authorized to receive it. *Davis v. Casey* (70 App. D. C. 27, 103 Fed. (2d) 529).

#### PLACE OF TENDER

When promissory note is payable at third person's office, it is the duty of the maker or indorsee, in the absence of directions from holder to the contrary, to tender payment there and if the note is in possession of a third person, he has the right to assume that such person has authority to receive the payment. *Fifth Congregational Church v. Bright* (28 App. D. C. 229, cert. den. 205 U. S. 541, 51 L. Ed. 921, 27 Sup. Ct. 788).

#### WAIVER OF DEFENSE OF USURY

When the debtor under a usurious obligation, which has come into the hands of an innocent purchaser for value, executes a new note to such third person, he will be deemed to have waived his right to set up usury, and the new note will be deemed to be upon a valid consideration. *McNeill v. Lilly* (65 App. D. C. 210, 82 Fed. (2d) 620).

#### § 28-802 [22:182]. Discharge of person secondarily liable.

A person secondarily liable on the instrument is discharged—

First. By an act which discharges the instrument.

Second. By the intentional cancelation of his signature by the holder.

Third. By the discharge of a prior party.

Fourth. By a valid tender of payment made by a prior party.

Fifth. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

Sixth. By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1424.)

#### NOTES TO DECISIONS

##### CANCELATION

Sections 181, 182, and 185, D. C. 1929, title 22 (§§ 28-801, 28-802, 28-805), speak of cancelation but at no place in the statute is there a definition of the term. Hence, resort must be had to the rules of the law merchant for proper application of the term. *Washington Loan & Trust Co. v. Colby* (71 App. D. C. 236, 108 Fed. (2d) 743).

##### EXTENSION OF TIME WITHOUT KNOWLEDGE OF INDORSER

Party secondarily liable is discharged if an agreement is entered into between the makers of the note and the payee for an extension of the time of payment without the knowledge or consent of the indorser. It is immaterial whether the extension is made before or after maturity of the note. *Anderson v. Lee D. Butler, Inc.* (61 App. D. C. 380, 63 Fed. (2d) 271).

##### NEW AGREEMENT

A failure to pay the first note under the bill of sale substituted for the original note without knowledge of the indorser did not operate to revive the obligation of such indorser on the original note. *Anderson v. Lee D. Butler* (61 App. D. C. 380, 63 Fed. (2d) 271).

##### NOTE OF DEBTOR

Note of debtor himself, or of a third party, is never considered as a payment of a precedent debt, unless there be a special agreement to that effect. *Ryan v. Security Sav. & Commercial Bank* (50 App. D. C. 292, 271 Fed. 366).

#### RELEASE OF SECURITY

Where a purchaser of an automobile, having given note with indorsement, executed instalment notes and bill of sale as security, released indorser without knowledge of such transaction. *Anderson v. Lee D. Butler, Inc.* (61 App. D. C. 380, 63 Fed. (2d) 271).

#### § 28-803 [22:183]. Payment by party secondarily liable not a discharge—Further negotiation.

Where the instrument is paid by a party secondarily liable thereon it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except—

First. Where it is payable to the order of a third person and has been paid by the drawer; and,

Second. Where it was made or accepted for accommodation and has been paid by the party accommodated. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1425.)

#### § 28-804 [22:184]. Discharge by renunciation of rights against party—Except holder in due course.

The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument; but a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1426.)

#### § 28-805 [22:185]. Cancelation.

A cancelation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancelation was made unintentionally, or under a mistake, or without authority. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1427.)

#### NOTES TO DECISIONS

##### MARKING NOTE "CANCELED"

Marking a note "canceled," as was done in the instant case, is sufficient to discharge the note. *Washington Loan & Trust Co. v. Colby* (71 App. D. C. 236, 108 Fed. (2d) 743).

#### § 28-806 [22:186]. Alteration—Effect.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. (Mar. 3, 1901, 31 Stat. 1408, ch. 854, § 1428.)

#### NOTES TO DECISIONS

##### ACKNOWLEDGMENT OF ALTERED INSTRUMENT

While there is a conflict of authority on the point whether one can bind himself by the acknowledgment of an altered or forged instrument and a promise to pay the



same without a new consideration, or some special ground of estoppel; however, he may do so provided the paper is in the hands of one who had no connection with the forgery, and the promise is not involved in an attempt to compound the felony. *Ofenstein v. Bryan* (20 App. D. C. 1); *National Capital Bank v. Bryan* (20 App. D. C. 26).

#### ALTERATION BEFORE INDORSEMENT

If the note in suit has not been materially altered at any time, or if it has been materially altered, but before indorsement thereof by the defendants, the plaintiff is entitled to recover notwithstanding such material alteration. *Towles v. Tanner* (21 App. D. C. 530).

#### BURDEN OF PROOF

If the defendants have shown such alteration, the burden of proof thereupon shifted to the plaintiff to show that such alteration was made before the indorsement of the note by the defendants; or that, if it was made after such indorsement, it was made with the knowledge or consent of the defendants, or was ratified by them with full knowledge thereof or with the means of knowledge in their possession, or that the note so altered was declared by them to be good and valid with a view to its negotiation. *Towles v. Tanner* (21 App. D. C. 530).

#### EXPLANATION OF ALTERATION

Where the alteration is material, and such as reasonably to excite suspicion, it is incumbent upon the party offering it, in support of his claim thereunder, to give some evidence tending to explain its condition. *Ofenstein v. Bryan* (20 App. D. C. 1); *National Capital Bank v. Bryan*, (20 App. D. C. 26).

If upon the face of the note it appears to have been materially altered, and the alteration is such as reasonably to excite suspicion, it is incumbent upon the plaintiff to explain its condition. But if alteration is not so apparent on the face of the paper as reasonably to excite suspicion, which is a question for the court in the first instance, then it is incumbent on the defendants, as matter of defense, to show the alteration. *Towles v. Tanner* (21 App. D. C. 530).

#### QUESTIONS FOR COURT

Question whether the alteration is material and so plainly suspicious as to warrant the requirement of some explanatory evidence as the condition of its admission, is for the determination of the court. *Ofenstein v. Bryan* (20 App. D. C. 1).

#### QUESTIONS FOR JURY

Question whether alteration was made before or after delivery, or with or without the knowledge or consent of the several signers and indorsers, is one that must be submitted to the jury. *Ofenstein v. Bryan* (20 App. D. C. 1).

#### § 28-807 [22: 187]. Material alteration—Definition.

Any alteration which changes—

First. The date.

Second. The sum payable, either for principal or interest.

Third. The time or place of payment.

Fourth. The number or the relations of the parties.

Fifth. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1429.)

#### Chapter 9.—BILLS OF EXCHANGE

Sec.

28-901. Definition.

28-902. Bill not an assignment of funds—Liability of drawee.

28-903. Drawee—Joint—Can not be alternative or successive.

Sec.

28-904. Foreign and inland bills—Definitions.

28-905. When bill may be treated as promissory note.

28-906. Referee in case of need.

#### ACCEPTANCE

28-907. Acceptance—Form—Sufficiency.

28-908. Holder entitled to acceptance on face of bill.

28-909. Acceptance by separate instrument.

28-910. Acceptance before bill drawn.

28-911. Time allowed for accepting.

28-912. Liability of drawee retaining or destroying bill.

28-913. Acceptance of incomplete, overdue, or previously dishonored bill.

28-914. Kinds of acceptance.

28-915. General acceptance.

28-916. Qualified acceptance.

28-917. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.

#### PRESENTMENT FOR ACCEPTANCE

28-918. When presentment for acceptance must be made.

28-919. When failure to present for acceptance releases drawer and indorser.

28-920. Acceptance in satisfaction of former debt—When deemed in complete payment.

28-921. Presentment for acceptance—How made—To whom.

28-922. On what days presentment for acceptance may be made.

28-923. Excuses for delay in presenting for acceptance.

28-924. Excuses for not presenting for acceptance—Bill treated as dishonored.

28-925. When bill dishonored by nonacceptance.

28-926. Dishonor by nonacceptance within prescribed time—Right of recourse.

28-927. Right of recourse when bill not accepted.

#### PROTEST

28-928. Protest—When necessary—Discharge of drawer and indorsers.

28-929. Protest—How made—Contents.

28-930. Protest—By whom made.

28-931. Protest—When to be made.

28-932. Protest—Where made.

28-933. Bill may be protested for both nonacceptance and nonpayment.

28-934. Protest before maturity if acceptor bankrupt or insolvent.

28-935. When protest dispensed with.

28-936. Protest when bill lost, destroyed, or wrongfully detained.

#### ACCEPTANCE FOR HONOR

28-937. Acceptance for honor supra protest.

28-938. Acceptance for honor supra protest—How made.

28-939. Acceptance for honor of drawer.

28-940. Liability of acceptor for honor.

28-941. Agreement of acceptor for honor.

28-942. Maturity of bill payable after sight and accepted for honor.

28-943. Protest of bill accepted for honor supra protest or containing a reference in case of need.

28-944. Presentment for payment to acceptor for honor—How made.

28-945. When delay in making presentment is excused.

28-946. Dishonor of bill by acceptor for honor—Protest.

#### PAYMENT FOR HONOR

28-947. Payment for honor supra protest—Who may make.

28-948. Payment for honor supra protest—How made.

28-949. Declaration before payment for honor supra protest.

28-950. Preference of parties offering to pay for honor.

28-951. Effect on subsequent parties where bill is paid for honor.

28-952. Where holder refuses to receive payment supra protest.

28-953. Rights of payer for honor.



BILLS IN A SET

Sec.

- 28-954. Bills in a set constitute one bill.
- 28-955. Right of holder where other parts negotiated to different holders.
- 28-956. Liability upon indorsement of two or more parts of set.
- 28-957. Acceptance of bills in a set—Liability of acceptor.
- 28-958. Payment by acceptor—Liability for outstanding accepted parts.
- 28-959. Effect of discharging one of a set.

§ 28-901 [22: 191]. Definition.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1430.)

§ 28-902 [22: 192]. Bill not an assignment of funds—Liability of drawee.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1431.)

§ 28-903 [22: 193]. Drawee—Joint—Can not be alternative or successive.

A bill may be addressed to two or more drawees jointly, whether they are partners or not, but not to two or more drawees in the alternative or succession. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1432.)

§ 28-904 [22: 194]. Foreign and inland bills—Definitions.

An inland bill of exchange is a bill which is or on its face purports to be both drawn and payable within this District. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill the holder may treat it as an inland bill. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1433.)

§ 28-905 [22: 195]. When bill may be treated as promissory note.

Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1434.)

§ 28-906 [22: 196]. Referee in case of need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1435.)

ACCEPTANCE

§ 28-907 [22: 201]. Acceptance—Form—Sufficiency.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The

acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1436.)

§ 28-908 [22: 202]. Holder entitled to acceptance on face of bill.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such a request is refused may treat the bill as dishonored. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1437.)

§ 28-909 [22: 203]. Acceptance by separate instrument.

Where an acceptance is written on a paper other than the bill itself it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1438.)

§ 28-910 [22: 204]. Acceptance before bill drawn.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1439.)

§ 28-911 [22: 205]. Time allowed for accepting.

The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1440.)

§ 28-912 [22: 206]. Liability of drawee retaining or destroying bill.

Where a drawee to whom a bill is delivered for acceptance destroys the same or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder he will be deemed to have accepted the same. (Mar. 3, 1901, 31 Stat. 1409, ch. 854, § 1441.)

§ 28-913 [22: 207]. Acceptance of incomplete, overdue, or previously dishonored bill.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1442.)

§ 28-914 [22: 208]. Kinds of acceptance.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1443.)



**§ 28-915 [22: 209]. General acceptance.**

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1444.)

**§ 28-916 [22: 210]. Qualified acceptance.**

An acceptance is qualified which is—

First. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated.

Second. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

Third. Local; that is to say, an acceptance to pay only at a particular place.

Fourth. Qualified as to time.

Fifth. The acceptance of some one or more of the drawees, but not of all. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1445.)

**§ 28-917 [22: 211]. Holder not bound to take qualified acceptance—Effect of taking—Notice to drawer and indorser.**

The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder or he will be deemed to have assented thereto. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1446.)

**PRESENTMENT FOR ACCEPTANCE****§ 28-918 [22: 221]. When presentment for acceptance must be made.**

Presentment for acceptance must be made—

First. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

Second. Where the bill expressly stipulates that it shall be presented for acceptance; or,

Third. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1447.)

**§ 28-919 [22: 222]. When failure to present for acceptance releases drawer and indorser.**

Except as herein otherwise provided, the holder of a bill which is required by section 28-918 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1448.)

**§ 28-920 [22: 223]. Acceptance in satisfaction of former debt—When deemed in complete payment.**

If any person doth accept any bill of exchange for and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting of any such bill for his debt, doth not take his due course to obtain payment thereof, by endeavoring to get the same accepted and paid, and make his protest, either for nonacceptance, or nonpayment thereof: *Provided*, That nothing herein contained shall extend to discharge any remedy, that any person may have against the drawer, acceptor or indorser of such bill. (3 & 4 Ann. ch. 9, §§ 7 & 8 (1704); Kilty's Rep. p. 245; Alex. Br. Stat., p. 653; Comp. Stat. D. C. Code, p. 68, §§ 9 and 10.)

**COMPILER'S NOTE**

This section is obsolete and largely inoperative. See compiler's note to §§ 28-101, 28-925.

**§ 28-921 [22: 224]. Presentment for acceptance—How made—To whom.**

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and,

First. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

Second. Where the drawee is dead, presentment may be made to his personal representative.

Third. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. (Mar. 3, 1901, 31 Stat. 1410, ch. 854, § 1449.)

**CROSS REFERENCE**

Presentment by notary public, §§ 1-508, 1-509.

**§ 28-922 [22: 225]. On what days presentment for acceptance may be made.**

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 28-603 and 28-616. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1450; June 30, 1902, 32 Stat. 543, ch. 1329.)

**§ 28-923 [22: 226]. Excuses for delay in presenting for acceptance.**

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1451.)



§ 28-924 [22: 227]. Excuses for not presenting for acceptance—Bill treated as dishonored.

Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance in either of the following cases:

First. When the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill.

Second. Where after the exercise of reasonable diligence presentment can not be made.

Third. Where, although presentment has been irregular, acceptance has been refused on some other ground. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1452.)

§ 28-925 [22: 228]. When bill dishonored by nonacceptance.

A bill is dishonored by nonacceptance—

First. When it is duly presented for acceptance and such an acceptance as is prescribed by chapters 1-10 of this title is refused or can not be obtained; or,

Second. When presentment for acceptance is excused and the bill is not accepted. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1453; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the word "Act" and inserting in lieu thereof the word "chapter." "Chapters 1-10 of this title" refers to said chapter which is the Uniform Negotiable Instruments Law. The 1901 act did not contain §§ 28-410, 28-920, and 28-1008 to 28-1010, and the cross reference should not be read to include these sections.

§ 28-926 [22: 229]. Dishonor by nonacceptance within prescribed time—Right of recourse.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1454.)

§ 28-927 [22: 230]. Right of recourse when bill not accepted.

When a bill is dishonored by nonacceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1455.)

#### PROTEST

§ 28-928 [22: 241]. Protest—When necessary—Discharge of drawer and indorsers.

Where a foreign bill, appearing on its face to be such, is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment it must be duly protested for nonpayment. If it is not so protested the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1456.)

#### CROSS REFERENCES

Protest by notary public, § 1-508.

Protest required when, § 28-730.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

Official protest of promissory note is not necessary in District of Columbia to hold indorsers. *Presbrey v. Thomas* (1 App. D. C. 171).

§ 28-929 [22: 242]. Protest—How made—Contents.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

First. The time and place of presentment.

Second. The fact that presentment was made, and the manner thereof.

Third. The cause or reason for protesting the bill.

Fourth. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (Mar. 3, 1901, 31 Stat. 1411, ch. 854, § 1457.)

§ 28-930 [22: 243]. Protest—By whom made.

Protest can be made by—

First. A notary public; or,

Second. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1458.)

#### CROSS REFERENCE

Other provisions concerning protests by notaries. §§ 1-508, 1-509.

§ 28-931 [22: 244]. Protest—When to be made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1459.)

§ 28-932 [22: 245]. Protest—Where made.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance it must be protested for nonpayment at the time when it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1460.)

§ 28-933 [22: 246]. Bill may be protested for both nonacceptance and nonpayment.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1461.)

§ 28-934 [22: 247]. Protest before maturity if acceptor bankrupt or insolvent.

Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1462.)



§ 28-935 [22: 248]. When protest dispensed with.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1463.)

§ 28-936 [22: 249]. Protest when bill lost, destroyed, or wrongfully detained.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1464.)

### ACCEPTANCE FOR HONOR

§ 28-937 [22: 261]. Acceptance for honor supra protest.

Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn, and where there has been an acceptance for honor for one party there may be a further acceptance by a different person for the honor of another party. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1465.)

§ 28-938 [22: 262]. Acceptance for honor supra protest—How made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1466.)

§ 28-939 [22: 263]. Acceptance for honor of drawer.

Where an acceptance for honor does not expressly state for whose honor it is made it is deemed to be an acceptance for the honor of the drawer. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1467.)

§ 28-940 [22: 264]. Liability of acceptor for honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1468.)

§ 28-941 [22: 265]. Agreement of acceptor for honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1469.)

§ 28-942 [22: 266]. Maturity of bill payable after sight and accepted for honor.

Where a bill payable after sight is accepted for honor its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1470.)

§ 28-943 [22: 267]. Protest of bill accepted for honor supra protest or containing a reference in case of need.

Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1412, ch. 854, § 1471.)

§ 28-944 [22: 268]. Presentment for payment to acceptor for honor—How made.

Presentment for payment to the acceptor for honor must be made as follows:

First. If it is to be presented in the place where the protest for nonpayment was made it must be presented not later than the day following its maturity.

Second. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 28-716. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1472.)

§ 28-945 [22: 269]. When delay in making presentment is excused.

The provisions of section 28-612 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1473.)

§ 28-946 [22: 270]. Dishonor of bill by acceptor for honor—Protest.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1474.)

### PAYMENT FOR HONOR

§ 28-947 [22: 281]. Payment for honor supra protest—Who may make.

Where a bill has been protested for nonpayment any person may intervene and pay it supra protest for the honor of any person liable thereon, or for the honor of the person for whose account it was drawn. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1475.)

§ 28-948 [22: 282]. Payment for honor supra protest—How made.

The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension to it. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1476.)

§ 28-949 [22: 283]. Declaration before payment for honor supra protest.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his



agent in that behalf, declaring his intention to pay the bill for honor and for whose honor he pays. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1477.)

§ 28-950 [22: 284]. Preference of parties offering to pay for honor.

Where two or more persons offer to pay a bill for the honor of different parties the person whose payment will discharge most parties to the bill will be given the preference. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1478.)

§ 28-951 [22: 285]. Effect on subsequent parties where bill is paid for honor.

Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged; but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1479.)

§ 28-952 [22: 286]. Where holder refuses to receive payment supra protest.

Where the holder of a bill refuses to receive payment supra protest he loses his right of recourse against any party who would have been discharged by such payment. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1480.)

§ 28-953 [22: 287]. Rights of payer for honor.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1481.)

### BILLS IN A SET

§ 28-954 [22: 291]. Bills in a set constitute one bill.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1482.)

§ 28-955 [22: 292]. Right of holder where other parts negotiated to different holders.

Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1483.)

§ 28-956 [22: 293]. Liability upon indorsement of two or more parts of set.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1484.)

§ 28-957 [22: 294]. Acceptance of bills in a set—Liability of acceptor.

The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (Mar. 3, 1901, 31 Stat. 1413, ch. 854, § 1485.)

§ 28-958 [22: 295]. Payment by acceptor—Liability for outstanding accepted parts.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1486.)

§ 28-959 [22: 296]. Effect of discharging one of a set.

Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1487.)

### Chapter 10.—PROMISSORY NOTES AND CHECKS

#### Sec.

28-1001. "Promissory note" defined.

28-1002. "Check" defined—Application of sections applying to bill of exchange.

28-1003. When check must be presented for payment.

28-1004. Checks or other demand instruments to be presented within one year.

28-1005. Certifying check—Effect.

28-1006. Effect where holder of check procures certification.

28-1007. Check not an assignment of funds.

28-1008. Liability of bank or trust company on forged, altered, or raised check.

28-1009. Liability of bank or trust company for nonpayment of check through error.

28-1010. Liability of forwarding bank on failure of payor bank to account for proceeds of check.

§ 28-1001 [22: 301]. "Promissory note" defined.

A negotiable promissory note, within the meaning hereof, is an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order it is not complete until indorsed by him. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1488.)

§ 28-1002 [22: 302]. "Check" defined—Application of sections applying to bill of exchange.

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions hereof applicable to a bill of exchange payable on demand apply to a check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1489.)

§ 28-1003 [22: 303]. When check must be presented for payment.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1490.)



§ 28-1004 [22: 303a]. Checks or other demand instruments to be presented within 1 year.

Where a check or other instrument payable on demand at any bank or trust company doing business in the District of Columbia is presented for payment more than one year from its date, such bank or trust company may, unless expressly instructed by the drawer or maker to pay the same, refuse payment thereof, and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 1.)

#### COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28-101, 28-925.

§ 28-1005 [22: 304]. Certifying check—Effect.

Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1491.)

§ 28-1006 [22: 305]. Effect where holder of check procures certification.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1492.)

§ 28-1007 [22: 306]. Check not an assignment of funds.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1493.)

§ 28-1008 [22: 307]. Liability of bank or trust company on forged, altered, or raised check.

(a) No bank or trust company doing business in the District of Columbia, which has paid and charged to the account of a depositor any money on a forged, altered, or raised check issued in the name of said depositor shall be liable to said depositor for the amount paid thereon unless either (1) within one year after notice to said depositor that the vouchers representing payments charged to the account of said depositor for the period during which such payment was made are ready for delivery, or (2), in case no such notice has been given, within six months after the return to said depositor of the voucher representing such payment, said depositor shall notify the bank or trust company that the check so paid is forged, altered, or raised.

(b) The notice referred to in subsection (a) may be given by mail to said depositor at his last-known address with postage prepaid.

(c) This section shall not be construed to relieve a depositor from due diligence in the examination of returned vouchers or in otherwise discovering that a check has been forged, altered, or raised, or in notifying the bank or trust company of his actual discovery of a forgery or alteration.

(d) When used in this section the word "check" shall also include drafts, notes, acceptances, or other negotiable instruments payable at a bank or trust company, and the word "forged" shall also include

an unauthorized signature by an agent or officer of a depositor.

(e) The provisions of this section shall not be held to apply to the forgery of an endorsement. (Apr. 5, 1939, 53 Stat. 566, ch. 37, § 3.)

#### COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28-101, 28-925.

§ 28-1009 [22: 308]. Liability of bank or trust company for nonpayment of check through error.

No bank or trust company doing business in the District of Columbia shall be liable to a depositor because of the nonpayment through mistake or error and without malice of a check, draft, note, acceptance, or other negotiable instrument, payable at any bank or trust company, which should have been paid unless the depositor shall allege and prove actual damage by reason of such nonpayment and in such event the liability shall not exceed the amount of damage so proved. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 6.)

#### COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28-101, 28-925.

§ 28-1010 [22: 309]. Liability of forwarding bank on failure of payor bank to account for proceeds of check.

Any bank or trust company doing business in the District of Columbia receiving for collection or deposit any check, draft, note, acceptance, or other negotiable instrument drawn upon or payable at any other bank, located outside the District of Columbia, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payer shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof shall not render the forwarding bank liable therefor: *Provided, however,* That such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (Apr. 5, 1939, 53 Stat. 567, ch. 37, § 7.)

#### COMPILER'S NOTE

This section is not a part of the Uniform Negotiable Instruments Law. See compiler's note to §§ 28-101, 28-925.

### Chapter 11.—UNIFORM SALES ACT—FORMATION OF CONTRACT

#### Sec.

- 28-1101. Contract to sell—Sale—Definition—Absolute or conditional—Parties.
- 28-1102. Capacity of parties—Liabilities for necessities—Definition.

#### FORMALITIES OF THE CONTRACT

- 28-1103. Form of contract of sale.
- 28-1104. Statute of frauds.

#### SUBJECT MATTER OF CONTRACT

- 28-1105. Existing and future goods.
- 28-1106. Undivided shares—Fungible goods.
- 28-1107. Destruction of goods sold—Option of buyer.
- 28-1108. Destruction of goods contracted to be sold—Option of buyer.



## THE PRICE

## Sec.

- 28-1109. Price—Ascertainment—Interest in real property as price.  
 28-1110. Price and terms to be fixed by third person—Failure to do so—Remedies.

## CONDITIONS AND WARRANTIES

- 28-1111. Breach of conditions—Effect—Remedies.  
 28-1112. Express warranty—Definition.  
 28-1113. Implied warranties of title.  
 28-1114. Implied warranty in contract to sell or sale of goods by description—By sample.  
 28-1115. Implied warranties of quality or fitness—Effect of express warranty.

## SALE BY SAMPLE

- 28-1116. Implied warranties in contract to sell or sale by sample.

## § 28-1101 [11: 61]. Contract to sell—Sale—Definition—Absolute or conditional—Parties.

(1) A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the "price."

(2) A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the "price."

(3) A contract to sell or a sale may be absolute or conditional.

(4) There may be a contract to sell or a sale between one part owner and another. (Mar. 17, 1937, 0 Stat. 29, ch. 43, § 1.)

## COMPILER'S NOTE

The first sentence of the act of 1937 provided: "On and after July 1, 1937, all sales of goods in the District of Columbia shall be made under and in accordance with the following provisions of law:"

## STATUTORY REFERENCES

Bills of lading, see U. S. C., title 49, ch. 4.  
 Sale of securities, U. S. C., title 15, ch. 2a.

## § 28-1102 [11: 62]. Capacity of parties—Liabilities for necessities—Definition.

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property.

Where necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.

"Necessaries" in this section means goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 2.)

## FORMALITIES OF THE CONTRACT

## § 28-1103 [11: 63]. Form of contract of sale.

Subject to the provisions of chapters 11-16 of this title and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth or may be inferred from the conduct of the parties. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 3.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

## § 28-1104 [11: 64]. Statute of frauds.

(1) A contract to sell or a sale of any goods or choses in action of the value of \$500 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

(2) The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

(3) There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 4.)

## COMPILER'S NOTE

It is considered that this section supersedes § 12-304.

## SUBJECT MATTER OF CONTRACT

## § 28-1105 [11: 65]. Existing and future goods.

(1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in chapters 11-16 of this title called future goods.

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 5.)

## § 28-1106 [11: 66]. Undivided shares—Fungible goods.

(1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight, or measure of the goods in the mass, and though the number, weight, or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller



is bound to make good the deficiency from similar goods unless a contrary intent appears. (Mar. 17, 1937, 50 Stat. 30, ch. 43, § 6.)

#### CROSS REFERENCE

Other provisions concerning sale of an undivided share, § 28-1201.

§ 28-1107 [11: 67]. Destruction of goods sold—Option of buyer.

(1) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

(2) Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided; or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 7.)

§ 28-1108 [11: 68]. Destruction of goods contracted to be sold—Option of buyer.

(1) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby voided.

(2) Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided; or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 8.)

#### THE PRICE

§ 28-1109 [11: 69]. Price—Ascertainment—Interest in real property as price.

(1) The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

(2) The price may be made payable in any personal property.

(3) Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for

promising to transfer the property in goods, chapters 11-16 of this title shall not apply.

(4) Where the price is not determined in accordance with the foregoing provisions, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (Mar. 17, 1937, 50 Stat. 31, ch. 43, § 9.)

#### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1110 [11: 70]. Price and terms to be fixed by third person—Failure to do so—Remedies.

(1) Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

(2) Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by chapters 14 and 15 of this title. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 10.)

#### CONDITIONS AND WARRANTIES

§ 28-1111 [11: 71]. Breach of conditions—Effect—Remedies.

(1) Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first-mentioned party may also treat the nonperformance of the condition as a breach of warranty.

(2) Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligations to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 11.)

#### COMPILER'S NOTE

The word "sell" in line 3 of subsection (2) probably should read "seller."

§ 28-1112 [11: 72]. Express warranty—Definition.

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 12.)



## § 28-1113 [11: 73]. Implied warranties of title.

In a contract to sell or a sale, unless a contrary intention appears, there is—

(1) An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

(2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

(3) An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

(4) This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, or other person professing to sell by virtue of authority in fact or law, goods in which a third person has a legal or equitable interest. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 13.)

## § 28-1114 [11: 74]. Implied warranty in contract to sell or sale of goods by description—By sample.

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 14.)

## § 28-1115 [11: 75]. Implied warranties of quality or fitness—Effect of express warranty.

Subject to the provisions of chapters 11-16 of this title and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be merchantable quality.

(3) If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

(4) In the case of a contract to sell or sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

(5) An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade.

(6) An express warranty or condition does not negative a warranty or condition implied under chapters 11-16 of this title unless inconsistent therewith. (Mar. 17, 1937, 50 Stat. 32, ch. 43, § 15.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

## NOTES TO DECISIONS

## SALES OF FOOD

The language of the statute held sufficiently broad to cover sales of food. *Hanback v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

## SUCCESSOR IN INTEREST

Donee—consumer of food not successor in interest of the buyer. *Hanback v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

## SALE BY SAMPLE

§ 28-1116 [11: 76]. Implied warranties in contract to sell or sale by sample.

In the case of a contract to sell or a sale by sample—

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in section 28-1307.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 16.)

## Chapter 12.—TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

## Sec.

- 28-1201. No property passes until goods are ascertained.
- 28-1202. Property in specific goods passes when parties so intend.
- 28-1203. Rules for ascertaining intention.
- 28-1204. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.
- 28-1205. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.
- 28-1206. Risk of loss.

## TRANSFER OF TITLE

- 28-1207. Sale by a person not the owner.
- 28-1208. Sale by one having a voidable title.
- 28-1209. Sale by seller in possession of goods already sold.
- 28-1210. Creditors' rights against sold goods in seller's possession.
- 28-1211. Negotiable documents of title—Definition.
- 28-1212. Negotiation of negotiable documents by delivery.
- 28-1213. Negotiation of negotiable documents by endorsement.
- 28-1214. Negotiable documents of title marked "Not negotiable."
- 28-1215. Transfer of nonnegotiable documents.
- 28-1216. Who may negotiate a negotiable document.
- 28-1217. Title and rights of person to whom negotiable document has been negotiated.
- 28-1218. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.
- 28-1219. Transfer of negotiable document without endorsement—Time of taking effect.



Sec.

- 28-1220. Warranties on sale of document.
- 28-1221. Liability of endorser—Limitation.
- 28-1222. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.
- 28-1223. Attachment or levy upon goods for which a negotiable document has been issued.
- 28-1224. Creditors' remedies to reach negotiable documents.

§ 28-1201 [11: 77]. No property passes until goods are ascertained.

Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 28-1106. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 17.)

§ 28-1202 [11: 78]. Property in specific goods passes when parties so intend.

(1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 18.)

§ 28-1203 [11: 79]. Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

Rule 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing is done.

Rule 3. (1) When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may re-vest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

(2) When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration

of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. (1) Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

(2) Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 28-1204. This presumption is applicable, although by the terms of the contract, the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. (Mar. 17, 1937, 50 Stat. 33, ch. 43, § 19.)

#### CROSS REFERENCE

Delivery to carrier on behalf of buyer, § 28-1306.

§ 28-1204 [11: 80]. Reservation by seller of right of possession or property to secure performance by buyer—Bill of lading.

(1) Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

(4) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure



acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is endorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading endorsed by the consignee named therein, or of the goods, without notice of the facts, making the transfer wrongful. (Mar. 17, 1937, 50 Stat. 34, ch. 43, § 20.)

§ 28-1205 [11: 81]. Sale by auction—Separate contracts—When sale complete—Seller's right to bid—Notice.

In the case of a sale by auction—

(1) Where goods are put up for sale by auction in lots, each lot is the subject of a separate contract of sale.

(2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 21.)

§ 28-1206 [11: 82]. Risk of loss.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 22.)

## TRANSFER OF TITLE

§ 28-1207 [11: 83]. Sale by a person not the owner.

(1) Subject to the provisions of chapters 11-16 of this title, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(2) Nothing in chapters 11-16 of this title, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common-law or statutory power of sale or under the order of a court of competent jurisdiction. (Mar. 17, 1937, 50 Stat. 35, ch. 43, § 23.)

### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

### NOTES TO DECISIONS

#### ESTOPPEL

The general rule is that the seller of chattels can confer no better title than he himself has, but a recognized exception to the rule is based on estoppel. *General Credit v. Universal Credit Co.* (69 App. D. C. 80, 99 Fed. (2d) 115).

If the owner of automobiles stands by and permits a licensed dealer in automobiles to hold himself out as the owner, to treat the goods as his own and place them with similar goods in a public show room and to offer them for sale to the public, he will be estopped from asserting his ownership against a purchaser for value without notice. *General Credit v. Universal Credit Co.* (69 App. D. C. 80, 99 Fed. (2d) 115).

§ 28-1208 [11: 84]. Sale by one having a voidable title.

Where the seller of goods has a voidable title thereto, but his title has not been voided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 24.)

§ 28-1209 [11: 85]. Sale by seller in possession of goods already sold.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 25.)

§ 28-1210 [11: 86]. Creditors' rights against sold goods in seller's possession.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of posses-



sion is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 26.)

**§ 28-1211 [11: 87]. Negotiable documents of title—Definition.**

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title within the meaning of chapters 11-16 of this title. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 27.)

**§ 28-1212 [11: 88]. Negotiation of negotiable documents by delivery.**

A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer; or

(b) Where by the terms of the document the carrier, warehouseman, or other bailee issuing the same, undertakes to deliver the goods to the order of a specified person, and such person or a subsequent endorsee of the document has endorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been endorsed in blank or to bearer, any holder may endorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the endorsement of such endorsee. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 28.)

**§ 28-1213 [11: 89]. Negotiation of negotiable documents by endorsement.**

A negotiable document of title may be negotiated by the endorsement of the person to whose order the goods are by the terms of the document deliverable. Such endorsement may be in blank, to bearer, or to a specified person. If endorsed to a specified person, it may be again negotiated by the endorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiations may be made in like manner. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 29.)

**§ 28-1214 [11: 90]. Negotiable documents of title marked "Not negotiable."**

If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "nonnegotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of chapters 11-16 of this title. But nothing in chapters 11-16 of this title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or

placing thereon the words "not negotiable," "non-negotiable," or the like. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 30.)

**COMPILER'S NOTE**

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

**§ 28-1215 [11: 91]. Transfer of nonnegotiable documents.**

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document cannot be negotiated and the endorsement of such a document gives the transferee no additional right. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 31.)

**§ 28-1216 [11: 92]. Who may negotiate a negotiable document.**

A negotiable document may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the document, the bailee issuing it undertakes to deliver the goods to the order of such person, or if at the time of negotiation the document is in such form that it may be negotiated by delivery. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 32.)

**§ 28-1217 [11: 93]. Title and rights of person to whom negotiable document has been negotiated.**

A person to whom a negotiable document of title has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 33.)

**§ 28-1218 [11: 94]. Rights of transferee of document—Nonnegotiable document—Notice to bailee—Remedy of creditors of transferor.**

A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a



subsequent sale of the goods by the transferor. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 34.)

**§ 28-1219 [11: 95]. Transfer of negotiable document without endorsement—Time of taking effect.**

Where a negotiable document of title is transferred for value by delivery, and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to endorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the endorsement is actually made. (Mar. 17, 1937, 50 Stat. 37, ch. 43, § 35.)

**§ 28-1220 [11: 96]. Warranties on sale of document.**

A person who for value negotiates or transfers a document of title by endorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

- (a) That the document is genuine;
- (b) That he has a legal right to negotiate or transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the document; and
- (d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 36.)

**§ 28-1221 [11: 97]. Liability of endorser—Limitation.**

The endorsement of a document of title shall not make the endorser liable for any failure on the part of the bailee who issued the document or previous endorsers thereof to fulfill their respective obligations. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 37.)

**§ 28-1222 [11: 98]. Negotiation to bona fide holder for value without notice not impaired by breach of duty, fraud, mistake, or duress.**

The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress, or conversion. (Mar. 17, 1937, 50 Stat. 36, ch. 43, § 38.)

**§ 28-1223 [11: 99]. Attachment or levy upon goods for which a negotiable document has been issued.**

If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them, they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied under an execution

unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 39.)

**§ 28-1224 [11: 100]. Creditors' remedies to reach negotiable documents.**

A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 40.)

**Chapter 13.—PERFORMANCE OF CONTRACT**

**Sec.**

- 28-1301. Duty of seller to deliver and buyer to accept and pay for goods.
- 28-1302. Delivery and payment are concurrent conditions.
- 28-1303. Delivery — Time — Place — Manner—Demand—Expense.
- 28-1304. Delivery of wrong quantity or mixed with other goods.
- 28-1305. Delivery in installments.
- 28-1306. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.
- 28-1307. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.
- 28-1308. Acceptance—Definition.
- 28-1309. Acceptance does not bar action for damages or breach of warranty—Notice required.
- 28-1310. Buyer is not bound to return goods not accepted—Notice to seller.
- 28-1311. Buyer's liability for failing to accept delivery—Rights of seller.

**§ 28-1301 [11: 101]. Duty of seller to deliver and buyer to accept and pay for goods.**

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 41.)

**§ 28-1302 [11: 102]. Delivery and payment are concurrent conditions.**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. (Mar. 17, 1937, 50 Stat. 38, ch. 43, § 42.)

**§ 28-1303 [11: 103]. Delivery—Time—Place—Manner—Demand—Expense.**

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to



the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

(2) Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 43.)

#### § 28-1304 [11: 104]. Delivery of wrong quantity or mixed with other goods.

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 44.)

#### § 28-1305 [11: 105]. Delivery in installments.

(1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

(2) Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to make delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the

circumstances of the case, whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation but not to a right to treat the whole contract as broken. (Mar. 17, 1937, 50 Stat. 39, ch. 43, § 45.)

#### § 28-1306 [11: 106]. Delivery to a carrier on behalf of the buyer—Duty of seller to contract with carrier—Insurance.

(1) Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section 28-1203, rule 5, or unless a contrary intent appears.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 46.)

#### § 28-1307 [11: 107]. Right of buyer to examine the goods—Exception—Authorized delivery to carrier.

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

(3) Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 47.)



## § 28-1308 [11: 108]. Acceptance—Definition.

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 48.)

## § 28-1309 [11: 109]. Acceptance does not bar action for damages or breach of warranty—Notice required.

In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know of such breach, the seller shall not be liable therefor. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 49.)

## § 28-1310 [11: 110]. Buyer is not bound to return goods not accepted—Notice to seller.

Unless otherwise agreed, where goods are delivered to the buyer, and he refused to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. (Mar. 17, 1937, 50 Stat. 40, ch. 43, § 50.)

## § 28-1311 [11: 111]. Buyer's liability for failing to accept delivery—Rights of seller.

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the right against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 51.)

### Chapter 14.—RIGHTS OF UNPAID SELLER AGAINST GOODS

Sec.

28-1401. Unpaid seller—Definition.

28-1402. Remedies of an unpaid seller.

## UNPAID SELLER'S LIEN

28-1403. When right of lien may be exercised.

28-1404. Lien after part delivery.

28-1405. When lien is lost.

## STOPPAGE IN TRANSITU

28-1406. Seller may stop goods in transitu on buyer's insolvency.

28-1407. When goods are in transit.

28-1408. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

## RESALE BY THE SELLER

Sec.

28-1409. Unpaid seller's right to resell—Notice—Validity of sale.

## RESCISSION BY THE SELLER

28-1410. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.

28-1411. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

## § 28-1401 [11: 112]. Unpaid seller—Definition.

(1) The seller of goods is deemed to be an unpaid seller within the meaning of chapters 11-16 of this title—

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

(2) In this part of chapters 11-16 of this title the term "seller" includes an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 52.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

## § 28-1402 [11: 113]. Remedies of an unpaid seller.

(1) Subject to the provisions of chapters 11-16 of this title, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has—

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of insolvency of the buyer, the right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by chapters 11-16 of this title; and

(d) A right to rescind the sale as limited by chapters 11-16 of this title.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 53.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

## UNPAID SELLER'S LIEN

## § 28-1403 [11: 114]. When right of lien may be exercised.

(1) Subject to the provisions of chapters 11-16 of this title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely—

(a) Where the goods have been sold without any stipulation as to credit;



(b) Where the goods have been sold on credit, but the term of credit has expired; and

(c) Where the buyer becomes insolvent

(2) The seller may exercise his right of lien, notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 54.)

#### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

#### § 28-1404 [11: 115]. Lien after part delivery.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (Mar. 17, 1937, 50 Stat. 41, ch. 43, § 55.)

#### § 28-1405 [11: 116]. When lien is lost.

(1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods; and

(c) By waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 56.)

#### STOPPAGE IN TRANSITU

#### § 28-1406 [11: 117]. Seller may stop goods in transitu on buyer's insolvency.

Subject to the provisions of chapters 11-16 of this title when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 57.)

#### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

#### § 28-1407 [11: 118]. When goods are in transit.

(1) Goods are in transit within the meaning of section 28-1406—

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee; and

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

(2) Goods are no longer in transit within the meaning of section 28-1406—

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer; and

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

(3) If goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(4) If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 58.)

#### § 28-1408 [11: 119]. Ways of exercising the right of stoppage in transitu—Duty of carrier or bailee in possession.

(1) The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

(2) When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancelation. (Mar. 17, 1937, 50 Stat. 42, ch. 43, § 59.)

#### RESALE BY THE SELLER

#### § 28-1409 [11: 120]. Unpaid seller's right to resell—Notice—Validity of sale.

(1) Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may



recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

(3) It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

(4) It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

(5) The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 60.)

### RESCISSION BY THE SELLER

§ 28-1410 [11: 121]. Unpaid seller's right to rescind the transfer of title—Notice of intention to rescind.

(1) An unpaid seller having the right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

(2) The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. (Mar. 17, 1937, 50 Stat. 43, ch. 43, § 61.)

§ 28-1411 [11: 122]. Effect of sale by buyer of goods subject to lien or stoppage in transitu—Bona fide purchaser of negotiable document of title.

Subject to the provisions of chapters 11-16 of this title, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiations be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 62.)

### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

### Chapter 15.—ACTIONS FOR BREACH OF CONTRACT

- | Sec.     |   |
|----------|---|
| 28-1501. | Action for the price.   |
| 28-1502. | Action for damages for nonacceptance of the goods—Measure of damages.       |
| 28-1503. | When seller may rescind contract to sell or sale—Notice to buyer.           |
| 28-1504. | Action for converting or detaining goods.                                   |
| 28-1505. | Action for damages for nondelivery—Measure of damages.                      |
| 28-1506. | Action for specific performance.  |
| 28-1507. | Remedies for breach of warranty—Rescinding the contract—Measure of damages. |
| 28-1508. | Recovery of interest and special damages.                                   |

§ 28-1501 [11: 123]. Action for the price.

(1) Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

(2) Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

(3) Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of section 28-1502 (4) are not applicable, the seller may offer to deliver the goods to the buyer, and, if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 63.)

§ 28-1502 [11: 124]. Action for damages for nonacceptance of the goods—Measure of damages.

(1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

(2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

(4) If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell



or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. (Mar. 17, 1937, 50 Stat. 44, ch. 43, § 64.)

**§ 28-1503 [11: 125]. When seller may rescind contract to sell or sale—Notice to buyer.**

Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 65.)

**§ 28-1504 [11: 126]. Action for converting or detaining goods.**

Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 66.)

**§ 28-1505 [11: 127]. Action for damages for nondelivery—Measure of damages.**

(1) Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

(2) The measure of damages is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract.

(3) Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered or if no time was fixed, then at the time of the refusal to deliver. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 67.)

**§ 28-1506 [11: 128]. Action for specific performance.**

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the court may seem just. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 68.)

**§ 28-1507 [11: 129]. Remedies for breach of warranty—Rescinding the contract—Measure of damages.**

(1) Where there is a breach of warranty by the seller, the buyer may, at his election—

(a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty; and

(d) Rescind the contract to sell, or the sale, and refuse to receive the goods; or if the goods have already been received return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

(2) When the buyer has claimed and has been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

(3) Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

(4) Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

(5) Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 28-1402.

(6) The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

(7) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (Mar. 17, 1937, 50 Stat. 45, ch. 43, § 69.)



## NOTES TO DECISIONS

## CHILD NOT SUCCESSOR IN INTEREST

Child who ate food purchased by its mother held not "a successor in interest of the buyer." *Hanback v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

## SALES OF FOOD

The language of the statute held sufficiently broad to cover sales of food. *Hanback v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

§ 28-1508 [11: 130]. Recovery of interest and special damages.

Nothing in chapters 11-16 of this title shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 70.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

## Chapter 16.—INTERPRETATION OF UNIFORM SALES ACT

## Sec.

- 28-1601. Variation of implied obligations.
- 28-1602. Rights may be enforced by action.
- 28-1603. Rule for cases not provided for by this act.
- 28-1604. Interpretation shall give effect to purpose of uniformity.
- 28-1605. Provisions not applicable to mortgages.
- 28-1606. Definitions.
- 28-1607. Act does not apply to the existing sales or contracts to sell.
- 28-1608. Short title.

§ 28-1601 [11: 131]. Variation of implied obligations.

Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 71.)

## NOTES TO DECISIONS

## SALES OF FOOD

The language of the act is sufficiently broad to cover sales of food. *Hanbach v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).

§ 28-1602 [11: 132]. Rights may be enforced by action.

Where any right, duty, or liability is declared by chapters 11-16 of this title, it may, unless otherwise by chapters 11-16 of this title provided, be enforced by action. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 72.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1603 [11: 133]. Rule for cases not provided for by this act.

In any case not provided for in chapters 11-16 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall

continue to apply to contracts to sell and to sales of goods. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 73.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1604 [11: 134]. Interpretation shall give effect to purpose of uniformity.

Chapters 11-16 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those States which enact it. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 74.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1605 [11: 135]. Provisions not applicable to mortgages.

The provisions of chapters 11-16 of this title relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security. (Mar. 17, 1937, 50 Stat. 46, ch. 43, § 75.)

## COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1606 [11: 136]. Definitions.

(1) In chapters 11-16 of this title, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of set-off or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its term the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by endorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.



"Order" in sections of chapters 11-16 of this title relating to documents of title means an order by indorsement on the documents.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting claim, whether for money or not, constitutes value where goods or documents of titles are taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of chapters 11-16 of this title when it is in fact done honestly, whether it be done negligently or not.

(3) A person is insolvent within the meaning of chapters 11-16 of this title who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the Federal Bankruptcy Law or not.

(4) Goods are in a "deliverable state" within the meaning of chapters 11-16 of this title when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. (Mar. 17, 1937, 50 Stat. 47, ch. 43, § 76.)

#### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1607 [11: 136a]. Act does not apply to the existing sales or contracts to sell.

None of the provisions of chapters 11-16 of this title shall apply to any sale, or to any contract to sell, made prior to the taking effect of chapters 11-16 of this title. (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 76a.)

#### COMPILER'S NOTE

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

§ 28-1608 [11: 138]. Short title.

Chapters 11-16 of this title may be cited as the "Uniform Sales Act." (Mar. 17, 1937, 50 Stat. 48, ch. 43, § 79.)

#### COMPILER'S NOTES

Section 77 of the 1937 act provided as follows: "All acts or parts of acts inconsistent with this act are hereby repealed."

Section 78 of the act provided that it shall take effect on July 1, 1937. See compiler's note to § 28-1101.

"Chapters 11-16 of this title" set forth the Uniform Sales Act.

### Chapter 17.—BULK SALES LAW

#### Sec.

28-1701. Sales in bulk—Written statement as to creditors.

28-1702. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

28-1703. Sale in bulk—Definition.

28-1704. Sales by executors, administrators, receivers, or public officers excepted.

28-1705. Presumptions and rules of evidence not affected.

§ 28-1701 [11: 14]. Sales in bulk—Written statement as to creditors.

It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares, or merchandise in bulk, for cash or credit, within the District of Columbia, to demand and receive from the vendor thereof, and if the vendor be a corporation then from a managing officer or agent thereof, at least five days before the consummation of such bargain or purchase and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness therefor, a written statement, under oath, containing the names and addresses of all of the creditors of said vendor, together with the amount of indebtedness due or owing, or to become due or owing, by said vendor to each of such creditors, and if there be no such creditors, a written statement, under oath, to that effect; and it shall be the duty of such vendor to furnish such statement at least five days before any sale or transfer by him of any stock of goods, wares, or merchandise in bulk. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 1.)

#### CROSS REFERENCE

Application to sale of corporation assets in their entirety, § 29-240.

§ 28-1702 [11: 15]. Sale presumed fraudulent and void unless notice is given by vendee to creditors of vendor.

After having received from the vendor the written statement, under oath, mentioned in section 28-1701, the vendor shall, at least five days before the consummation of such bargain or purchase, and at least five days before paying or delivering to the vendor any part of the purchase price or consideration therefor, or any promissory note or other evidence of indebtedness for the same, in good faith notify or cause to be notified, personally or by wire or by registered letter, each of the creditors of the vendor named in said statement of the proposed purchase by him of such stock of goods, wares, or merchandise; and whenever any person shall purchase any stock of goods, wares, or merchandise in bulk, or shall pay the purchase price or any part thereof, or execute or deliver to the vendor thereof or to his order, or to any person for his use, any promissory note or other evidence of indebtedness for said stock, or any part thereof, without having first demanded and received from his vendor the statement, under oath, as provided in section 28-1701, and without also having notified or caused to be notified all of the creditors



of the vendor named in such statement, as in this section prescribed, such purchase, sale, or transfer shall, as to any and all creditors of the vendor, be conclusively presumed fraudulent and void. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 2.)

#### COMPILER'S NOTE

The word "vendor" in line 3 probably should read "vendee."

#### § 28-1703 [11: 16]. Sale in bulk—Definition.

Any sale or transfer of a stock of goods, wares, or merchandise out of the usual or ordinary course of the business or trade of the vendor, or whenever thereby substantially the entire business or trade theretofore conducted by the vendor shall be sold or conveyed, or attempted to be sold or conveyed, to one or more persons, shall be deemed a sale or transfer in bulk, in contemplation of sections 28-1701 to 28-1705. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 3.)

#### NOTES TO DECISIONS

##### BULK SALES

Where parties interested do not contest sale of undivided interest under the act, their court will not determine whether such interest is within the purview of said act. *Second Natl. Bank v. Yankon* (55 App. D. C. 252, 4 Fed. (2d) 445).

#### § 28-1704 [11: 17]. Sales by executors, administrators, receivers, or public officers excepted.

Nothing contained in sections 28-1701 to 28-1705 shall apply to sales made by executors, administrators, receivers, or any public officer conducting a sale in his official capacity. (Apr. 28, 1904, 33 Stat. 555, ch. 1809, § 4.)

#### § 28-1705 [11: 18]. Presumptions and rules of evidence not affected.

Except as expressly provided in sections 28-1701 to 28-1705, nothing therein contained, nor any act thereunder shall change or affect the rules of evidence or the presumptions of law. (Apr. 28, 1904, 33 Stat. 556, ch. 1809, § 5.)

### Chapter 18.—WAREHOUSE RECEIPTS—UNIFORM LAW—ISSUANCE OF WAREHOUSE RECEIPTS

#### Sec.

- 28-1801. Persons who may issue receipts.
- 28-1802. Form of receipts—Essential terms—Liability for omissions.
- 28-1803. Form of receipts—What terms may be inserted.
- 28-1804. Nonnegotiable receipt—Definition.
- 28-1805. Negotiable receipt—Definition—"Nonnegotiable provision" void.
- 28-1806. Duplicate receipts must be so marked—Liability for failure to do so.
- 28-1807. Nonnegotiable receipt must be so marked—Effect of failure to do so.

#### § 28-1801 [27: 11]. Persons who may issue receipts.

Warehouse receipts may be issued by any warehouseman. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 1.)

#### CROSS REFERENCE

Regulations for withdrawal of bonded liquors, § 25-115.

#### STATUTORY REFERENCES

Bills of lading, U. S. C., title 49, ch. 4.  
Sales of securities, U. S. C., title 15, ch. 2A.

#### § 28-1802 [27: 12]. Form of receipts—Essential terms—Liability for omissions.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored;
- (b) The date of issue of the receipt;
- (c) The consecutive number of the receipt;
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) The rate of storage charges;
- (f) A description of the goods or of the packages containing them;
- (g) The signature of the warehouseman, which may be made by his authorized agent;
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby for all damage caused by the omission from a negotiable receipt of any of the terms herein required. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 2.)

#### § 28-1803 [27: 13]. Form of receipts—What terms may be inserted.

A warehouseman may insert in a receipt issued by him any other terms and conditions, provided that such terms and conditions shall not—

- (a) Be contrary to the provisions of chapters 18-22 of this title;
- (b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 3.)

#### COMPILER'S NOTE

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

#### NOTES TO DECISIONS

##### NEGLIGENCE OF WAREHOUSEMAN

In absence of any statute, neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

The provision in a receipt that no transfer would be recognized unless entered on the books of the warehouse would not relieve the storage company for delivery of goods to transferor rather than to transferee, where the company had been notified of the transfer and failure to have it entered in the books was due to its negligence. *Fidelity Storage Co. v. Kingsbury* (64 App. D. C. 208, 76 Fed. (2d) 978, revd. on other grounds on reh. 65 App. D. C. 69, 79 Fed. (2d) 705).



**§ 28-1804 [27: 14]. Nonnegotiable receipt—Definition.**

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 4.)

**§ 28-1805 [27: 15]. Negotiable receipt — Definition — “Nonnegotiable provision” void.**

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void. (Apr. 15, 1910, 36 Stat. 301, ch. 167, § 5.)

**§ 28-1806 [27: 16]. Duplicate receipts must be so marked—Liability for failure to do so.**

When more than one negotiable receipt is issued for the same goods, the word “duplicate” shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value, supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 6.)

**§ 28-1807 [27: 17]. Nonnegotiable receipt must be so marked—Effect of failure to do so.**

A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it “non-negotiable” or “not negotiable.” In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 7.)

**CROSS REFERENCE**

Effect of warehouseman's placing words “nonnegotiable” on negotiable document of title to personal property, § 28-1214.

**Chapter 19.—OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RIGHTS****Sec.**

- 28-1901. Obligation of warehouseman to deliver—Excuse for refusal.
- 28-1902. Persons to whom warehouseman may deliver with justification.
- 28-1903. Warehouseman's liability for misdelivery.
- 28-1904. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.
- 28-1905. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.
- 28-1906. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.
- 28-1907. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.
- 28-1908. Duplicate receipts—Effect—Liability of warehouseman.

**Sec.**

- 28-1909. Warehouseman cannot set up title in himself.
- 28-1910. Interpleader of adverse claimants.
- 28-1911. Warehouseman has reasonable time to determine validity of claims.
- 28-1912. Adverse title is no defense, except as above provided.
- 28-1913. Liability for nonexistence or misdescription of goods.
- 28-1914. Liability for care of goods.
- 28-1915. Goods must be kept separate.
- 28-1916. Fungible goods may be commingled, if warehouseman authorized.
- 28-1917. Liability of warehouseman to depositors of commingled goods.
- 28-1918. Judicial proceeding affecting title.
- 28-1919. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.
- 28-1920. Creditors' remedies to reach negotiable receipts.
- 28-1921. Claims included in the warehouseman's lien.
- 28-1922. Against what property the lien may be enforced.
- 28-1923. How the lien may be lost.
- 28-1924. Negotiable receipt must state charges for which lien is claimed.
- 28-1925. Warehouseman need not deliver until lien is satisfied.
- 28-1926. Warehouseman's lien does not preclude other remedies.
- 28-1927. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.
- 28-1928. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.
- 28-1929. Other methods of enforcing liens.
- 28-1930. Effect of sale.

**§ 28-1901 [27: 21]. Obligation of warehouseman to deliver—Excuse for refusal.**

A warehouseman, in the absence of some lawful excuse provided by chapters 18-22 of this title, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

- (a) An offer to satisfy the warehouseman's lien;
- (b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and
- (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 8.)

**COMPILER'S NOTE**

“Chapters 18-22 of this title” set forth the Warehouse Receipts Act.

**§ 28-1902 [27: 22]. Persons to whom warehouseman may deliver with justification.**

A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

- (a) The person lawfully entitled to the possession of the goods or his agent;
- (b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has written authority



from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 9.)

**§ 28-1903 [27: 23]. Warehouseman's liability for mis-delivery.**

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of section 28-1902, and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (Apr. 15, 1910, 36 Stat. 302, ch. 167, § 10.)

**§ 28-1904 [27: 24]. Negotiable receipts must be canceled when goods delivered—Liability of warehouseman.**

Except as provided in section 28-1930, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 11.)

**§ 28-1905 [27: 25]. Negotiable receipts must be canceled or marked when part of goods delivered—Liability of warehouseman.**

Except as provided in section 28-1930, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 12.)

**§ 28-1906 [27: 26]. Altered receipts—Liability of warehouseman—Right of purchaser for value without notice.**

The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was—

(a) Immaterial,

(b) Authorized, or

(c) Made without fraudulent intent.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 13.)

**§ 28-1907 [27: 27]. Delivery of goods where receipt lost or destroyed—Bond—Holder for value of receipt without notice.**

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties, to be approved by the court, to protect the warehouseman from any liability or expense which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Apr. 15, 1910, 36 Stat. 303, ch. 167, § 14.)

**§ 28-1908 [27: 28]. Duplicate receipts—Effect—Liability of warehouseman.**

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 15.)

**§ 28-1909 [27: 29]. Warehouseman cannot set up title in himself.**

No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 16.)



**§ 28-1910 [27: 30]. Interpleader of adverse claimants.**

If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 17.)

**§ 28-1911 [27: 31]. Warehouseman has reasonable time to determine validity of claims.**

If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 18.)

**§ 28-1912 [27: 32]. Adverse title is no defense, except as above provided.**

Except as provided in sections 28-1910, 28-1911 and in sections 28-1902 and 28-1930, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 19.)

**§ 28-1913 [27: 33]. Liability for nonexistence or misdescription of goods.**

A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate or of the kind they were said to be by the depositor. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 20.)

**§ 28-1914 [27: 34]. Liability for care of goods.**

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 21.)

**§ 28-1915 [27: 35]. Goods must be kept separate.**

Except as provided in section 28-1916, a warehouseman shall keep the goods, so far separate from goods of other depositors and from other goods of the same depositor for which a separate receipt has been is-

sued as to permit at all times the identification and redelivery of the goods deposited. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 22.)

**§ 28-1916 [27: 36]. Fungible goods may be commingled, if warehouseman authorized.**

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Apr. 15, 1910, 36 Stat. 304, ch. 167, § 23.)

**§ 28-1917 [27: 37]. Liability of warehouseman to depositors of commingled goods.**

The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 24.)

**§ 28-1918 [27: 38]. Judicial proceeding affecting title.**

Whenever the title or right of possession to any goods, wares, merchandise, or personal property or storage shall be put in issue by any judicial proceeding, the same shall be delivered upon the order of the court, after prepayment of the storage charges and cash advances then due by the person at whose instance such change of possession is so ordered, and who shall be entitled to recover such payment as part of the costs in such proceeding, or, if defeated therein, he shall be credited with such payment in taxation of costs against him. And unless the person, firm, association, or corporation so conducting a storage business shall claim some right, title, or interest in said stored property other than the lien herein above authorized, he, it, or they shall not be made a party to such judicial proceedings. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1621.)

**COMPILER'S NOTE**

This section is not part of the Uniform Warehouse Receipts Act.

**§ 28-1919 [27: 39]. Attachment or levy upon goods for which a negotiable receipt has been issued—Surrender of receipt.**

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 25.)

**§ 28-1920 [27: 40]. Creditors' remedies to reach negotiable receipts.**

A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts



of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 26.)

§ 28-1921 [27: 41]. Claims included in the warehouseman's lien.

Subject to the provisions of section 28-1924, a warehouseman shall have a lien on goods deposited or on proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisement of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 27.)

#### NOTES TO DECISIONS

##### RIGHTS OF CONDITIONAL VENDOR OR MORTGAGEE

Neither a conditional vendee nor a mortgagor may by any contract with a warehouseman subordinate the interest of the conditional vendor or mortgagee to the warehouseman's lien. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

When the conditional sale contract was neither acknowledged nor recorded, and there was actual delivery of the chattels to the purchaser, whose possession was such that a pledge of the goods by him to one taking them in good faith for value would have been valid, the warehouseman's lien under the express terms of the Warehouse Receipts Act was superior to the claim of the furniture company. *Fidelity Storage Co. v. Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).

§ 28-1922 [27: 42]. Against what property the lien may be enforced.

Subject to the provisions of section 28-1924, a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 28.)

#### NOTES TO DECISIONS

##### PRIOR LIENS

There is no provision of law making a warehouseman's lien superior to a prior lien of a conditional vendor or mortgagee. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

##### RECORDED CONDITIONAL SALES

A recorded conditional sale contract is superior to the lien of a warehouseman where goods were stored after removing them from State without seller's consent. *Smiths Transfer & Storage Co. v. Reliable Stores Corp.* (61 App. D. C. 106, 58 Fed. (2d) 511).

##### UNRECORDED CONDITIONAL SALES

Warehouseman's lien for goods stored by one who claimed to be the owner was superior to lien of vendor

under a conditional sales contract which was neither acknowledged nor recorded. *Fidelity Storage Co. v. Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).

§ 28-1923 [27: 43]. How the lien may be lost.

A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of chapters 18-22 of this title. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 29.)

##### COMPILER'S NOTE

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

§ 28-1924 [27: 44]. Negotiable receipt must state charges for which lien is claimed.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 28-1921, although the amount of the charges so enumerated is not stated in the receipt. (Apr. 15, 1910, 36 Stat. 305, ch. 167, § 30.)

§ 28-1925 [27: 45]. Warehouseman need not deliver until lien is satisfied.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 31.)

§ 28-1926 [27: 46]. Warehouseman's lien does not preclude other remedies.

Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 32.)

§ 28-1927 [27: 47]. Satisfaction of lien—Notice required—Sale by auction—Notice of sale—Proceeds—Right of claimant.

A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of



the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed an advertisement of the sale, describing the goods to be sold and stating the name of the owner or person on whose account the goods are held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of chapters 18-22 of this title, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Apr. 15, 1910, 36 Stat. 306, ch. 167, § 33.)

#### COMPILER'S NOTE

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

§ 28-1928 [27: 48]. Perishable and hazardous goods—Notice to owner—Sale—Disposition of proceeds.

If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such

person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of section 28-1927. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 34.)

§ 28-1929 [27: 49]. Other methods of enforcing liens.

The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 35.)

#### NOTES TO DECISIONS

##### REFLEVIN SUIT

A warehouseman who did not elect to proceed by bill in equity, and who has lost possession of the goods in a replevin suit, may not thereafter file a bill in equity to enforce his warehouseman's lien, as his rights will be fully protected in the replevin suit. *Sachs v. Kinyoun* (47 App. D. C. 561).

§ 28-1930 [27: 50]. Effect of sale.

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 36.)

#### Chapter 20.—NEGOTIATION AND TRANSFER OF RECEIPTS

##### Sec.

- 28-2001. Negotiation of negotiable receipts by delivery.
- 28-2002. Negotiation of negotiable receipts by indorsement.
- 28-2003. Transfer of receipts.
- 28-2004. Who may negotiate a receipt.
- 28-2005. Rights of person to whom a receipt has been negotiated.
- 28-2006. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferer.
- 28-2007. Transfer of negotiable receipt without indorsement.
- 28-2008. Warranties on sale of receipt.
- 28-2009. Liability of indorser—Limitation.
- 28-2010. No warranty implied from accepting payment of a debt.
- 28-2011. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.
- 28-2012. Subsequent negotiation.
- 28-2013. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.



**§ 28-2001 [27: 61]. Negotiation of negotiable receipts by delivery.**

A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 37.)

**§ 28-2002 [27: 62]. Negotiation of negotiable receipts by indorsement.**

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 38.)

**§ 28-2003 [27: 63]. Transfer of receipts.**

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right. (Apr. 15, 1910, 36 Stat. 307, ch. 167, § 39.)

**§ 28-2004 [27: 64]. Who may negotiate a receipt.**

A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 40.)

**§ 28-2005 [27: 65]. Rights of person to whom a receipt has been negotiated.**

A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of

the receipt had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 41.)

**§ 28-2006 [27: 66]. Rights of transferee of receipt—Nonnegotiable receipt—Notice to warehouseman—Remedy of creditors of transferer.**

A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferer, the title to the goods, subject to the terms of any agreement with the transferer.

If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferer or transferee of a nonnegotiable receipt, the title of the transferer to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferer, or by a notification to the warehouseman by the transferer or a subsequent purchaser from the transferer of a subsequent sale of the goods by the transferer. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 42.)

**NOTES TO DECISIONS**

**WRONGFUL DELIVERY, RECOVERY BY TRANSFEE**

Transferee of warehouse receipt, who notified the storage company of the transfer, was entitled to recover from the company the value of the goods, which were delivered to the transferor through mistake of officers of the storage company. *Fidelity Storage Co. v. Kingsbury* (64 App. D. C. 203, 76 Fed. (2d) 978, revd. on other grounds on reh. and modified 65 App. D. C. 69, 79 Fed. (2d) 705).

Transferee of a warehouse receipt may recover from the storage company for delivery of the goods to the wrong party only to the value placed upon the goods when they were stored, where there was no showing of fraud on the part of the storage company. *Fidelity Storage Co. v. Kingsbury* (64 App. D. C. 203, 76 Fed. (2d) 978, revd. on other grounds on reh. and modified 65 App. D. C. 69, 79 Fed. (2d) 705).

**§ 28-2007 [27: 67]. Transfer of negotiable receipt without indorsement.**

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferer is essential for negotiation, the transferee acquires a right against the transferer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 43.)

**§ 28-2008 [27: 68]. Warranties on sale of receipt.**

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;



(c) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 44.)

**§ 28-2009 [27: 69]. Liability of indorser—Limitation.**

The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (Apr. 15, 1910, 36 Stat. 308, ch. 167, § 45.)

**§ 28-2010 [27: 70]. No warranty implied from accepting payment of a debt.**

A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 46.)

**§ 28-2011 [27: 71]. Negotiation to purchaser for value without notice not impaired by breach of duty, fraud, mistake, or duress.**

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 47.)

**§ 28-2012 [27: 72]. Subsequent negotiation.**

Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 48.)

**§ 28-2013 [27: 73]. Negotiation defeats unpaid seller's lien—A right of stoppage in transitu.**

Where a negotiable receipt has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subse-

quent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 49.)

**Chapter 21.—CRIMINAL OFFENSES**

**Sec.**

- 28-2101. Issue of receipt for goods not received.
- 28-2102. Issue of receipt containing false statement.
- 28-2103. Issue of duplicate receipts not so marked.
- 28-2104. Issue for warehouseman's goods of receipts which do not state that fact.
- 28-2105. Delivery of goods without obtaining negotiable receipts.
- 28-2106. Negotiation of receipt for mortgaged goods.

**§ 28-2101 [27: 81]. Issue of receipt for goods not received.**

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 50.)

**§ 28-2102 [27: 82]. Issue of receipt containing false statement.**

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 51.)

**§ 28-2103 [27: 83]. Issue of duplicate receipts not so marked.**

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 28-1907, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 309, ch. 167, § 52.)

**§ 28-2104 [27: 84]. Issue for warehouseman's goods of receipts which do not state that fact.**

Where there are deposited with or held by a warehouseman goods of which he is the owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents,



or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 53.)

**§ 28-2105 [27: 85]. Delivery of goods without obtaining negotiable receipts.**

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 28-1907 and 28-1930, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 54.)

**§ 28-2106 [27: 86]. Negotiation of receipt for mortgaged goods.**

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 55.)

**Chapter 22.—INTERPRETATION**

**Sec.**

28-2201. When rules of common law still applicable.

28-2202. Interpretation shall give effect to purpose of uniformity.

28-2203. Definitions.

28-2204. Receipts prior to April 15, 1910, exempt.

28-2205. Short title.

**§ 28-2201 [27: 3]. When rules of common law still applicable.**

In any case not provided for in chapters 18-22 of this title, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress, or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 56.)

**COMPILER'S NOTE**

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

**§ 28-2202 [27: 4]. Interpretation shall give effect to purpose of uniformity.**

Chapters 18-22 of this title shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 57.)

**COMPILER'S NOTE**

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

**§ 28-2203 [27: 1]. Definitions.**

First. In chapters 18-22 of this title, unless the context or subject matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

Second. A thing is done "in good faith" within the meaning of chapters 18-22 of this title when it is in fact done honestly, whether it be done negligently or not. (Apr. 15, 1910, 36 Stat. 310, ch. 167, § 58.)

**COMPILER'S NOTE**

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

**§ 28-2204 [27: 2]. Receipts prior to April 15, 1910, exempt.**

The provisions of chapters 18-22 of this title do not apply to receipts made and delivered prior to the taking effect of this act (Apr. 15, 1910). (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 59.)

**COMPILER'S NOTE**

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

**§ 28-2205 [27: 87]. Short title.**

Chapters 18-22 of this title may be cited as the Warehouse Receipts Act. (Apr. 15, 1910, 36 Stat. 311, ch. 167, § 62.)

**COMPILER'S NOTE**

"Chapters 18-22 of this title" set forth the Warehouse Receipts Act.

**Chapter 23.—FIDUCIARIES—UNIFORM ACT**

**Sec.**

28-2301. Definitions.

28-2302. Application of payment made to fiduciaries.



## Sec.

- 28-2303. Registration of transfer of securities held by fiduciaries.
- 28-2304. Transfer of negotiable instruments by fiduciary.
- 28-2305. Check drawn by fiduciary payable to third person.
- 28-2306. Check drawn by and payable to fiduciary.
- 28-2307. Deposit in name of fiduciary as such.
- 28-2308. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.
- 28-2309. Deposit in fiduciary's personal account.
- 28-2310. Deposit in names of two or more trustees.
- 28-2311. Law not retroactive.
- 28-2312. Cases not provided for in chapter.
- 28-2313. Uniformity of interpretation.
- 28-2314. Short title.

## § 28-2301 [11: 31]. Definitions.

The following provisions concerning liability for participation in breaches of fiduciary obligations, and to make uniform the law with reference thereto, shall be in force in the District of Columbia, namely:

(1) In this chapter unless the context or subject matter otherwise requires:

"Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

"Fiduciary" includes a trustee under any trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

(2) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether it be done negligently or not. (May 14, 1928, 45 Stat. 509, ch. 545, § 1.)

## NOTES TO DECISIONS

## IN GENERAL

Considered in its entirety, it is manifest that the effect of the act (this chapter) is to enlarge the ability of fiduciaries to avoid the limitations imposed by the common law, although the liabilities of the fiduciaries as such are not affected, but only those of persons dealing with them. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065.)

## § 28-2302 [11: 32]. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary. (May 14, 1928, 45 Stat. 510, ch. 545, § 2.)

## CROSS REFERENCE

Trust or joint accounts, deposits, or safe-deposit boxes, § 26-201 et seq.

## NOTES TO DECISIONS

## "MISAPPROPRIATION" DEFINED

The word "misappropriation" means wrong appropriation, or the use of a fund for a different purpose than that for which it was created, but not necessarily a dishonest purpose. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

## § 28-2303 [11: 33]. Registration of transfer of securities held by fiduciaries.

If a fiduciary in whose name are registered any shares of stock, bonds, or other securities of any corporation, public or private, or company or other association or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only where registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith. (May 14, 1928, 45 Stat. 510, ch. 545, § 3.)

## § 28-2304 [11: 34]. Transfer of negotiable instruments by fiduciary.

If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 4.)

## § 28-2305 [11: 35]. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or



with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument. (May 14, 1928, 45 Stat. 510, ch. 545, § 5.)

**§ 28-2306 [11: 36]. Check drawn by and payable to fiduciary.**

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 6.)

**NOTES TO DECISIONS**

**TRUST DEPOSIT TRANSFERRED**

Where trust deposit in the name of the individual trustees and trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, the transaction was not covered by this section, but comes within the scope of § 28-2312 and must be decided under common-law principles. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

**§ 28-2307 [11: 37]. Deposit in name of fiduciary as such.**

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 7.)

**§ 28-2308 [11: 38]. Deposit in name of principal—Check drawn thereon by fiduciary—Check payable to drawee bank.**

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check. (May 14, 1928, 45 Stat. 511, ch. 545, § 8.)

**§ 28-2309 [11: 39]. Deposit in fiduciary's personal account.**

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith. (May 14, 1928, 45 Stat. 511, ch. 545, § 9.)

**NOTES TO DECISIONS**

**TRUST DEPOSIT TRANSFERRED**

Where trust deposit in the name of the individual trustees and the trustee corporation was transferred by check to the account of the corporation, the result being to settle an overdraft of the corporation, it was not the case of a transfer by the fiduciary in payment of a personal debt (§§ 28-2307 and 28-2308), but was a transfer by one set of fiduciaries to another, and the bank was not liable unless it had actual knowledge of misappropriation. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

**§ 28-2310 [11: 40]. Deposit in names of two or more trustees.**

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the



trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith. (May 14, 1928, 45 Stat. 512, ch. 545, § 10.)

#### § 28-2311 [11: 41]. Law not retroactive.

The provisions of this chapter shall not apply to transactions that took place prior to the time when it takes effect (May 14, 1928). (May 14, 1928, 45 Stat. 512, ch. 545, § 11.)

#### § 28-2312 [11: 42]. Cases not provided for in chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, shall continue to apply. (May 14, 1928, 45 Stat. 512, ch. 545, § 12.)

#### § 28-2313 [11: 43]. Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (May 14, 1928, 45 Stat. 512, ch. 545, § 13.)

### NOTES TO DECISIONS

#### CONGRESSIONAL COMMITTEE REPORTS

In construing this chapter, recourse may be had to the reports of the committees of Congress and to the notes of the Commissioners. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

#### UNIFORM AND DEFINITE RULES

The purpose of this chapter was to establish uniform and definite rules in place of the diverse and indefinite rules formerly prevailing as to constructive notice of breaches of fiduciary obligations. It is obvious that in the use of the words "actual knowledge" Congress meant to change the rule previously applied in many courts of constructive, implied or imputed knowledge. *Colby v. Riggs Nat. Bank* (67 App. D. C. 259, 92 Fed. (2d) 183, 114 A. L. R. 1065).

#### § 28-2314 [11: 44]. Short title.

This chapter may be cited as the Uniform Fiduciaries Act. (May 14, 1928, 45 Stat. 512, ch. 545, § 14.)

## Chapter 24.—BONDS AND UNDERTAKINGS

### Sec.

- 28-2401. Bond—Definition.
- 28-2402. Undertaking—Definition.
- 28-2403. Fiduciary's bond—Undertaking to be given in lieu thereof—Form—Judgments thereon—Jurisdiction of District Court—Actions, remedies, proceedings.
- 28-2404. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.
- 28-2405. Actions on bonds in a penal sum containing an avoidance condition.
- 28-2406. Action upon bond to United States by fiduciary or public officer in which private person has an interest.
- 28-2407. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

#### § 28-2401 [3: 1]. Bond—Definition.

A bond, when required or referred to, in the provisions of this code, shall be understood to signify an obligation in a certain sum or penalty, subject to a condition, on breach of which it is to become absolute and to be enforceable by action. (Mar. 3, 1901, 31 Stat. 1264, ch. 854, § 478.)

### COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of March 3, 1901, as shown in the history lines of the various sections of this compilation.

### CROSS REFERENCES

Attachment and garnishment bond, § 16-301.  
 Replevin bond, § 16-1804.  
 Sureties generally, § 16-2001 et seq.

### NOTES TO DECISIONS

#### BONDS AND UNDERTAKINGS DISTINGUISHED

Unlike the ordinary appeal bond, which is an obligation under seal, with a fixed penalty, and a definite condition, limited to become effective or otherwise by the determination of the appeal, an undertaking is without seal, or fixed penalty, and without condition; and is simply a promise or an assumption of liability, to perform a judgment, or to pay damages and costs. *Tenney v. Taylor* (1 App. D. C. 223).

#### § 28-2402 [3: 2]. Undertaking—Definition.

An undertaking shall be understood to signify an agreement entered into by a party to a suit or proceeding, with or without sureties, upon which a judgment or decree may be rendered in the same suit or proceeding against said party and his sureties, if any, the said party and sureties submitting themselves to the jurisdiction of the court for that purpose. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 479.)

### NOTES TO DECISIONS

#### PURPOSE AND EFFECT

While an undertaking differs in form from the bond, its essential purpose and effect are the same as those of the bond, to give the guaranty of an additional person as security for the costs that might be incurred and the damages that might result to an appellee by the prosecution of an appeal that prevents him from realizing his claim as speedily and as effectively as he might otherwise have done. *Tenney v. Taylor* (1 App. D. C. 223).

#### § 28-2403 [3: 3]. Fiduciary's bond—Undertaking to be given in lieu thereof—Form—Judgments thereon—Jurisdiction of District Court—Actions, remedies, proceedings.

In all cases where, by the provisions of this code, a bond is required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or any other fiduciary appointed or confirmed by the District Court of the United States for the District of Columbia, or any member thereof, or where a bond is required from any party to a cause or proceeding pending in such court, such bond shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises, and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court shall direct; that the court may give judgment thereon in favor of any person thereby aggrieved against such principal and sureties for the damages suffered or sustained by such aggrieved party, and that such judgment may be rendered in



said cause or proceeding against all or any of the parties whose names are thereto signed.

And the said District Court of the United States for the District of Columbia and its respective special terms, be, and they are hereby, vested with and given jurisdiction and authority to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon such undertaking as law and justice shall require: *Provided*, That nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

All provisions of this code relating to actions, remedies and proceedings upon bonds of such fiduciaries shall apply and be effective as to such undertakings to the same extent as if such undertaking had been expressly mentioned and referred to therein. (Apr. 19, 1920, 41 Stat. 564, ch. 153, § 479a.)

#### COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of March 3, 1901, as shown in the history lines of the various sections of this compilation.

#### NOTES TO DECISIONS

##### IN GENERAL

This section does not repeal 1901 code, § 445 (§ 16-301), relative to attachment bonds. *Tri-State Motor Corp. v. Standard Steel Car Co.* (51 App. D. C. 109, 276 Fed. 631).

§ 28-2404 [3:4]. Counsel fee may be allowed on bond or undertaking for restraining order or injunction.

In any proceeding in the District Court of the United States for the District of Columbia or any special term thereof to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction the court, in assessing damages to be recovered thereunder, may include such reasonable counsel or attorney fees as the party aggrieved or damaged by such restraining order or injunction may have been put to or incurred in obtaining a dissolution thereof. (Apr. 19, 1920, 41 Stat. 565, ch. 153, § 479b.)

#### NOTES TO DECISIONS

##### ATTORNEY FEES ALLOWED

Attorney fees, incurred in procuring the dissolution of an injunction improperly issued, are recoverable as damages upon the injunction bond, whether the dissolution of the wrongful injunction be obtained by interlocutory or final decree. *Local Union No. 368 v. Barker Painting Co.* (58 App. D. C. 51, 24 Fed. (2d) 879).

Counsel fees are not allowed in action on injunction bond after successfully defending action on contract and defeating injunction. *Stanfield v. Vollbehr* (61 App. D. C. 239, 60 Fed. (2d) 670).

Addition of \$2,000 attorneys' fees as part of damages for wrongful injunction against sale of property under a trust deed was unauthorized under the circumstances. *Maiatico v. Mortgage Security Corp.* (61 App. D. C. 245, 60 Fed. (2d) 1081).

§ 28-2405 [3:5]. Actions on bonds in a penal sum containing an avoidance condition.

A bond in a penal sum, containing a condition that it shall be void on the payment of a certain sum of money, or the performance of an act, or of certain duties, shall have the same effect for the purpose of maintaining an action upon it as if it contained a

covenant to pay the money or perform the act or the duties specified in the condition. But the damages to be recovered for a breach, or successive breaches, of the condition, as against the sureties therein, shall not exceed the penalty of the bond. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 480.)

#### NOTES TO DECISIONS

##### CONSTRUCTION

In suit against sureties bond is to be strictly construed. *United States v. Maloney* (4 App. D. C. 505).

Recitals in bond, and all material traversable matter set forth in breaches assigned and which have not been traversed are to be taken as admitted and withdrawn from the province of the jury. *United States v. Maloney* (4 App. D. C. 505).

##### FORGERY

Surety can not plead forgery of principal's name to bond when surety executes it after its purported execution by the principal. *United States v. Boyd* (8 App. D. C. 440).

##### SURETIES

By the execution of a bond and its return to the principal or his agent for delivery to the obligee the surety becomes estopped to set up any condition not known to that obligee, upon which his signature has been obtained. *United States v. Boyd* (8 App. D. C. 440).

Discontinuance of a suit as to the principal will not, in the absence of explanation, be sufficient to release the sureties on his bond who were named as codefendants. *Starr v. United States* (8 App. D. C. 552, revd. on other grounds 164 U. S. 627, 41 L. Ed. 577, 17 Sup. Ct. 223).

A bond executed to the United States is valid, although there is no previous statutory authorization therefor. *United States v. Pumphrey* (11 App. D. C. 44).

§ 28-2406 [3:6]. Action upon bond to United States by fiduciary or public officer in which private person has an interest.

Whenever a bond is executed to the United States by any fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are interested, any such person, aggrieved by a breach of such condition, shall be entitled to maintain an action thereon in his own name against the obligor and his sureties to recover damages for the injury suffered by him in consequence of such breach; and it shall be the duty of the custodian of such bond to furnish a certified copy thereof to said party for the purpose aforesaid on payment of the legal fees therefor. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 481; June 30, 1902, 32 Stat. 530, ch. 1329, § 481.)

##### AMENDMENT

The 1902 amendment struck out the word "persons," before the word "aggrieved," and inserted in lieu thereof the word "person."

#### NOTES TO DECISIONS

##### ACTION ON OFFICIAL BOND

Action on an official bond running to the District of Columbia cannot be maintained by one not a party thereto, in the absence of the consent of the District or an express statute authorizing such action. *District of Columbia ex rel. Langellotti v. Fidelity & Deposit Co.* (50 App. D. C. 309, 271 Fed. 383).

##### DISBURSING OFFICER

Although bond required of a disbursing officer of the Government when first filed was not properly executed and it was returned to the principal who properly executed it, there is no presumption against its genuineness, in a suit by the Government against the surety, and in such transaction the relation between the Government



and the disbursing officer is not that of principal and agent. *Howgate v. United States* (3 App. D. C. 277, affd. 166 U. S. 571, 41 L. Ed. 1119, 17 Sup. Ct. 682).

In action by United States on the bond of an alleged delinquent disbursing officer, a duly authenticated transcript from the Treasury Department of the accounts of the disbursing officer offered in evidence by the United States under U. S. Rev. Stat., § 836, U. S. Comp. Stats. 1901, p. 670, is not admissible, for it does not include all transactions with the United States during term of service, but only those transactions connected with the appropriations for which such official is alleged to be in default need be shown by such transcript. *Goff v. United States* (22 App. D. C. 512).

#### PLUMBING INSPECTOR

Those injured by neglect of the inspector of plumbing in the performance of his official duties may maintain an action in the name of the District of Columbia to his use on the bond given by the inspector, under a plumbing regulation requiring the inspector to give a bond of \$5,000, "conditioned for the faithful performance of the duties of his office." *District of Columbia v. Ball* (22 App. D. C. 543).

Plumbing regulations of District of Columbia requiring inspector of plumbing to give bond with sureties for benefit of persons aggrieved by his acts of neglect, is valid, although the act of Congress of April 23, 1892 (27 Stat. 21, ch. 53) authorizing appointment of inspector of plumbing does not require bond. *District of Columbia v. Ball* (22 App. D. C. 543).

One who purchases house in which plumbing is defective without knowledge of such facts existing, may maintain action on official bond of inspector of plumbing for failure to inspect plumbing when the house was in the course of construction. *District of Columbia v. Ball* (22 App. D. C. 543).

§ 28-2407 [3:7]. Bonds of trustees or other fiduciaries—No discharge by fiduciary's payment to himself in another capacity of trust.

If any person appointed by order or decree of the court to the office of trustee or to any other fiduciary office shall give bond, with surety or sureties, for the due performance of his duties, he shall not be allowed to discharge said bond by receipts, releases, or acquittances from himself, as attorney for parties interested, to himself as such trustee or other fiduciary; but the funds or estate for the due application whereof he is responsible shall be considered as remaining in his hands, and said bond shall continue in force as against both principal and sureties until said funds or estate shall be fully accounted for and paid over or delivered to the parties interested therein, or their attorney, other than said trustee or other fiduciary duly authorized to receive the same. (Mar. 3, 1901, 31 Stat. 1265, ch. 854, § 482.)

#### NOTES TO DECISIONS

##### SALE TRUSTEE

Bond of a trustee appointed by court in an equity cause to sell real estate which runs to the United States, can be put in suit by person injuriously affected and in such suit the United States is the nominal plaintiff only. *Morse v. United States ex rel. Hine* (29 App. D. C. 433).

When decree for sale of infant's real estate is void for want of jurisdiction, the bond of trustee appointed to make the sale is void also, and the surety may show such invalidity in a suit against him on the bond by the United States. *Morse v. United States ex rel. Hine* (29 App. D. C. 433).

This section does not apply where payment was by the sale trustee to himself as testamentary trustee. *United States Fidelity & Guar. Co. v. Klein* (60 App. D. C. 354, 54 Fed. (2d) 828, cert. den. 285 U. S. 544, 76 L. Ed. 936, 52 Sup. Ct. 394).

## Chapter 25.—ASSIGNMENT OF CHOSSES IN ACTION

### Sec.

- 28-2501. Judgments.
- 28-2502. Bonds.
- 28-2503. Nonnegotiable contracts.
- 28-2504. General assignments.

#### § 28-2501 [2:1]. Judgment.

A judgment or money decree may be assigned in writing, and upon the assignment thereof being filed in the clerk's office the assignee may maintain an action or sue out a scire facias or execution on said judgment in his own name, as the original plaintiff might have done. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 431.)

#### COMPILER'S NOTE

The words "the clerk's office" should probably read "the office of the clerk of the court in which such judgment was rendered."

#### CROSS REFERENCE

Parties to actions generally, § 13-401 and notes.

#### RULES OF CIVIL PROCEDURE

Writs of scire facias have been abolished in the district courts, similar relief may be obtained by action or motion as prescribed by court rules, see Rule 81 (b).

#### NOTES TO DECISIONS

##### DECREE FOR ALIMONY

"A decree ordering the payment of a periodical allowance of alimony in the future is not assignable," although accrued alimony (under an order which it was beyond the power of the court in its discretion to modify or vacate) may be assigned. *Lynham v. Hufty* (44 App. D. C. 589).

##### JUDGMENT IMPROPERLY ENTERED

Where the rules require that judgment shall not be entered for four days after verdict, a judgment improperly entered by the clerk within that time is not absolutely void, and may be assigned. *Hutchinson v. Brown* (8 App. D. C. 157).

#### § 28-2502 [2:2]. Bonds.

Any bond or obligation under seal for the payment of money may be assigned under the name and seal of the obligee therein named, and the assignee may maintain an action thereon in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 432.)

#### CROSS REFERENCE

Parties to actions generally, § 13-401 et seq.

#### § 28-2503 [2:3]. Nonnegotiable contracts.

All nonnegotiable written agreements for the payment of money, including nonnegotiable bills of exchange and promissory notes, or for the delivery of personal property, all open accounts, debts, and demands of a liquidated character, except claims against the United States or the salaries of public officers, may be assigned in writing, so as to vest in the assignee a right to sue for the same in his own name. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 433.)

#### CROSS REFERENCES

Assignment of contract of apprenticeship, § 36-108.  
Assignment of motor-vehicle lien, §§ 40-708, 40-709.  
Parties to actions generally, § 13-401 et seq.  
Teachers' retirement annuity may not be assigned, § 31-718.  
See § 16-1904 as to set-off of nonnegotiable debts.



## NOTES TO DECISIONS

## ACTION BY ASSIGNOR AFTER ASSIGNMENT

Evidence tending to prove that action was brought, not in the name of the assignee, as permitted by the Code, or in the name of the assignor to the use of the assignee, as at common law, but by the assignor after his assignment, was properly excluded where such defense had not been pleaded. *Pierce v. Gillet & Co.* (64 App. D. C. 156, 75 Fed. (2d) 675.)

## SINGLE CAUSE OF ACTION

Creditor has no right to split up a single cause of action, either by the institution in his own name of separate suits upon separate fractions thereof, or by the assignment of such several parts to several persons without knowledge and consent of the debtor, so as to require the latter to respond to different actions and to incur accumulation. *Sincell v. Davis* (24 App. D. C. 218).

A single cause of action may be assigned, and the assignee may sue upon it in his own name, usually subject to all the equities existing between the assignor and the debtor; but this does not authorize the distribution of a single cause of action into fractional parts, and their assignment to several persons without the consent of the debtor. *Sincell v. Davis* (24 App. D. C. 218).

## STOCK CERTIFICATES

It is well settled that certificates of stock are not negotiable instruments. At the same time, they are so constantly used as collateral and passed from hand to hand, when the blank transfer and power of attorney on their backs has been formally executed by the party to whom they were issued, that the general custom in the city of Washington is to regard the holder as the owner for the purpose of selling or pledging them. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

While indorsed certificates of stock do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

## SUBSCRIPTIONS TO CAPITAL STOCK OF CORPORATION

Subscriptions to the capital stock of a corporation may be assigned by the corporation, so as to give the assignee a right to sue in his own name. *Crook v. International Trust Co.* (32 App. D. C. 490).

## § 28-2504 [2: 4]. General assignments.

In case of a general assignment which shall include choses in action, it shall not be necessary to execute a separate assignment of each chose in action, but the assignee shall be entitled, by virtue of the general assignment, to sue in his own name on the several choses in action included therein. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 434.)

## CROSS REFERENCE

See notes to §§ 28-2501, 28-2503.

## NOTES TO DECISIONS

## ACTION BY ASSIGNOR AFTER ASSIGNMENT

As defenses must be pleaded the court did not err in excluding evidence even though it might have proved that the action was not in the name of the assignee, or in the name of the assignor to the use of the assignee, as the practice was at common law, but an action by an assignor after his assignment. *Pierce v. Gillet & Co.* (64 App. D. C. 156, 75 Fed. (2d) 675).

## Chapter 26.—ASSIGNMENTS FOR BENEFIT OF CREDITORS

## Sec.

- 28-2601. Inventory of estate—List of creditors.
- 28-2602. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.
- 28-2603. Bond of assignee.
- 28-2604. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.
- 28-2605. Duties of assignee.
- 28-2606. Preferences to be void.
- 28-2607. Proceedings by one or more of several creditors—Benefit of all—Costs.
- 28-2608. Assignments made to hinder, delay, or defraud.
- 28-2609. Notices to creditors.
- 28-2610. Exempt property not to be included.

## § 28-2601 [2: 21]. Inventory of estate—List of creditors.

In all cases of voluntary assignments made in the District of Columbia for the benefit of creditors, the debtor shall annex to such assignment an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, their respective residences and places of business, if known, and the amounts of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate, and such assignment shall vest in the assignee the title to any other property, except what is legally exempt, belonging to the debtor at the time of making the assignment and comprehended within the general terms of the same. (Mar. 3, 1901, 31 Stat. 1256, ch. 854, § 435.)

## NOTES TO DECISIONS

## DECISIONS UNDER PRIOR LAW

All parts of a deed of assignment for the benefit of creditors will be considered in arriving at the general intention of the instrument, and if consistent with the language two constructions can be given, that is to be adopted which will render it legal and operative rather than illegal and void. *Cissell v. Johnston* (4 App. D. C. 335).

An attempt to limit the benefit of the trust to such creditors only as shall release their demands if not paid in full is a preference within the meaning of the Act of Congress of February 24, 1893 (27 Stat. 474), and void, and all liabilities within the provisions of the assignment shall be paid pro rata from the assets thereof. *Cissell v. Johnston* (4 App. D. C. 335).

Assignment by debtor to a creditor of a fund due him under a contract with District of Columbia for erection of school buildings, with directions to the assignee after paying his own claim, to distribute the residue among certain other creditors, passes the legal title to the fund and creates a trust for creditors named although at the time some of them had no knowledge of the transaction and did not assent to it. *Smith v. Herrell* (11 App. D. C. 425).

Confession of judgment by an insolvent debtor in favor of a bona fide creditor is not such a preference as is prohibited by Act of Congress of February 24, 1893, § 2, declaring void preferences of one creditor over another. *Strasburger v. Dodge* (12 App. D. C. 37).

Under laws of Maryland the general words of an assignment for benefit of creditors are restricted by particular description of a schedule which is made part of it; and where such assignment executed in Washington, D. C., purports to convey a life estate of the assignor in lands in Maryland as expressed in schedule, the assignee will take only such life estate, although assignment purports to convey all of assignor's property. *Keane v. Chamberlain* (14 App. D. C. 84).



**§ 28-2602 [2: 22]. Assignee—Assent in writing—Acknowledgment—Recordation of assignment.**

The assignee in every such assignment shall be a resident of the District of Columbia, his assent shall appear in writing in, or at the end of, or indorsed on, the assignment, and the assignment shall be invalid unless duly acknowledged and recorded within five days after its execution in the land records of the said District. The trust created by such assignment shall be executed under the supervision and control of the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 436.)

**CROSS REFERENCE**

See notes to § 28-2601.

**NOTES TO DECISIONS**

**RIGHT TO MAINTAIN ACTION**

Assignment is admissible in evidence in a suit by the assignee to show his right to maintain the action. *Mazza v. Russell* (47 App. D. C. 87).

**§ 28-2603 [2: 23]. Bond of assignee.**

Immediately upon the filing of such assignment for record it shall be the duty of the assignee to execute and file in the clerk's office of the District Court of the United States for the District his bond to the United States, in an amount and with security to be approved by the justice holding the equity court, conditioned for the faithful performance of his duties according to law, and said court may from time to time require said assignee, or any trustee appointed in his place, to give additional security whenever the interests of the creditors demand the same. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 437.)

**CROSS REFERENCE**

See notes to § 28-2601.

**§ 28-2604 [2: 24]. Failure of assignee to comply—Appointment of trustee by court—Death or removal of trustee or assignee.**

If the assignee named in any such assignment shall fail or refuse to comply with any of the requirements aforesaid, the justice holding the equity court may, on the application of the assignor or any creditor interested in such assignment, remove said assignee and appoint a trustee in his place to execute the trusts created by said assignment, who shall give bond as the court may require. And said court shall have power to accept the resignation of any assignee or trustee, and in case of his resignation, death, or removal from the District to appoint a trustee in his place. The court shall also have power, for cause shown, on the application of any surety, creditor, or other person interested, to remove any assignee or trustee and appoint a trustee in his place, and to make and enforce all orders necessary to put the newly appointed trustee in possession of all property, moneys, books, papers, and other effects covered by the assignment. And in case of the death of any assignee or trustee the court may require his executor or administrator to settle the account of said assignee or trustee and to deliver over to his successor all property and other effects belonging to the trust, in default of which said successor may bring suit upon the bond of said deceased assignee or trustee or upon

the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 438; June 30, 1902, 32 Stat. 530, ch. 1329.)

**AMENDMENT**

Act of 1901 was amended by adding at the end thereof the words "or upon the bond of such executor or administrator, accordingly as such assignee or trustee, executor or administrator is the party in default."

**§ 28-2605 [2: 25]. Duties of assignee.**

It shall be the duty of the assignee or trustee, after giving bond as aforesaid, to collect and take into his possession all the property and effects covered by the assignment, and to that end he may bring suit in his own name to recover debts due or property belonging to the assignor and embraced in the assignment. And the court may require the assignor to be examined under oath touching his said property, and may pass all orders necessary to prevent any fraudulent transfer of or change in the property of the assignor. The said assignee or trustee shall return inventories of the assets coming to his hands and, under the direction of the court, sell and dispose of the same, and his conveyance of any property of the assignor, real or personal, shall transfer the entire title of the assignor therein to any purchaser. When the assets have been converted into money the said assignee or trustee shall settle his accounts and make distribution among the creditors, under the direction of the court, according to the usual course of proceeding in equity in creditor's suits. (Mar. 3, 1901, 31 Stat. 1257, ch. 854, § 439.)

**§ 28-2606 [2: 26]. Preferences to be void.**

Every provision in any voluntary assignment made for the payment of one debt or liability in preference to another shall be void, and all debts and liabilities within the provisions of the assignment shall be paid pro rata from the assets: *Provided*, That nothing herein contained shall be held to affect the priority of liens and incumbrances created bona fide and existing before the execution of such assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 440.)

**§ 28-2607 [2: 27]. Proceedings by one or more of several creditors—Benefit of all—Costs.**

Any proceeding instituted under this chapter by one or more creditors shall be deemed to be for the equal benefit of all creditors, but the court may make such allowance to the creditor or creditors instituting the same, out of the fund to be distributed, for expenses, including counsel fees, as may be just and equitable. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 441.)

**§ 28-2608 [2: 28]. Assignments made to hinder, delay, or defraud.**

Nothing contained in this chapter shall prevent any creditor otherwise entitled from attacking any assignment as made to hinder, delay, or defraud the creditors of the assignor, and whenever any such assignment shall appear to the court to have been made with such intent, the court may enjoin any proceeding thereunder, and upon finally decreeing the same to be void may appoint a trustee with power



to take possession of all the effects of the debtor and may pass and enforce all orders necessary to put him in possession of the same, and said trustee shall qualify in the same manner and perform the same duties as the trustee provided for in sections 28-2601 to 28-2607. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 442.)

## CROSS REFERENCES

Fraudulent conveyances, generally, § 12-401 et seq.  
See notes to § 28-2601.

## § 28-2609 [2: 29]. Notices to creditors.

In all cases of assignment the court shall require the trustee or trustees, whether named in the assignment or appointed by the court, in pursuance of the sections aforesaid, to give notice as the court may think proper to all the creditors of the assignor to produce and prove their respective claims against the assignor before the auditor of the court, to the end that they may be fairly adjudicated and the said creditors may share equally the assets of the insolvent assignor, subject, however, to any legal priorities created by valid incumbrances antedating the assignment. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 443.)

## § 28-2610 [2: 30]. Exempt property not to be included.

No assignment for the benefit of creditors shall be construed to include or cover any property exempt from levy or sale on execution unless the exemption is expressly waived; and the court may direct the manner in which exempt property may be ascertained and set aside before any sale by the trustee or trustees. (Mar. 3, 1901, 31 Stat. 1258, ch. 854, § 444.)

## CROSS REFERENCE

Exemptions generally, § 15-401 et seq.

## Chapter 27.—INTEREST AND USURY

## Sec.

- 28-2701. Rate of interest in absence of agreement—Judgments against the District.
- 28-2702. Rate of interest—Express contracts.
- 28-2703. Usury—Definition.
- 28-2704. Action to recover usury paid—Limitation.
- 28-2705. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.
- 28-2706. Parties may be made to testify.
- 28-2707. Interest on judgments for liquidated debt.
- 28-2708. Interest on judgments for damages in actions in contract or tort.
- 28-2709. Interest on judgment in suits on contracts made elsewhere.

## § 28-2701 [17: 1]. Rate of interest in absence of agreement—Judgments against the District.

The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: *Provided*, That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1178; July 1, 1902, 32 Stat. 610, ch. 1352.)

## AMENDMENT

The 1902 amendment added the proviso.

## CROSS REFERENCE

Interest and charges permitted under Money Lenders Law, § 26-601 et seq.

## NOTES TO DECISIONS

## DECISIONS UNDER PRIOR LAW

While Act of April 22, 1870, 16 Stat. 91, ch. 59, fixed the rate of interest on judgments it did not cause such judgments or decrees to bear interest which would not have borne interest previously thereto. *Washington & G. R. Co. v. Tobriner* (147 U. S. 571, 37 L. Ed. 284, 13 Sup. Ct. 557).

## JUDGMENTS

If a judgment regularly rendered in the Supreme (District) Court of the District in a common-law action of tort cannot bear interest a fortiori it should not be permitted to run upon the judgment of the court of claims. *Gray v. District of Columbia* (1 App. D. C. 20).

## LEGAL RATES

When debtor defaults, compensation equal to value of the money, which is legal interest upon it, will be permitted during time the party is in default, provided a claim is made in declaration for the interest. *District of Columbia v. Metropolitan R. Co.* (8 App. D. C. 322, affd. 195 U. S. 322, 49 L. Ed. 219, 25 Sup. Ct. 28).

All that plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she admitted. *Richards v. Bippus* (18 App. D. C. 293).

## OCCASIONAL LOANS ON REAL ESTATE

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

## USURY

"When the promise to pay a sum above the legal interest depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." *Whelpley v. Ross* (25 App. D. C. 207).

Illegality of the transaction does not affect the obligation to pay a tax, and though the accruals represented legally uncollectible usury, there was at all times a reasonable expectation that they would be paid, and this fact is enough to constitute them income to the same extent as if the several amounts were actually paid. *Barker v. Magruder* (68 App. D. C. 211, 95 Fed. (2d) 122, affg. 26 Fed. Supp. 1004).

Usury law protects the maker in spite of knowledge. The same financial pressure which forced him to submit to usury in the first place may force him to renew. To permit a mere renewal or extension of the contract to purge the usury would defeat the purpose of the statute. *Bowen v. Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

## § 28-2702 [17: 2]. Rate of interest—Express contracts.

The parties to a bond, bill, promissory note, or other instrument of writing for the payment of money at any future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding eight per centum per annum. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1179; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

## AMENDMENT

The 1920 act changed rate of interest from ten to eight per centum.

## CROSS REFERENCES

Interest and charges permitted under Money Lenders Law, § 26-601 et seq.

See note to § 28-2701. *Whelpley v. Ross* (25 App. D. C. 207).



## NOTES TO DECISIONS

## ADDITIONAL LOAN AS USURY

Usury sustained based on additional loan payable to intermediary. *Quinn v. National Mtg. & Inv. Co.* (61 App. D. C. 44, 57 Fed. (2d) 410).

## BONUS AS USURY

"Bonus" being a sum paid to the creditor for the continued use of the money, clearly counts as interest for the purpose of the usury law; and a bonus, which, when added to the nominal interest on a 2-year extension exceeded 8 percent, was usurious. *Bowen v. Mount Vernon Sav. Bank* (70 App. D. C. 273, 105 Fed. (2d) 796).

## INCOMPLETE TRANSACTION

Where transaction contemplated, with usurious rates, never took place, claim of usury could not be sustained. *Rosslyn Steel & Cement Co. v. Etchison* (61 App. D. C. 43, 57 Fed. (2d) 409).

## § 28-2703 [17: 3]. Usury—Definition.

If any person or corporation shall contract in the District, verbally, to pay a greater rate of interest than six per centum per annum, or shall contract, in writing, to pay a greater rate than eight per centum per annum, the creditor shall forfeit the whole of the interest so contracted to be received: *Provided*, That nothing in this chapter contained shall be held to repeal or affect sections 26-601 to 26-611. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1180; June 30, 1902, 32 Stat. 542; ch. 1329; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

## COMPILER'S NOTE

Sections 26-601 to 26-611 is the Money Lenders Act.

## AMENDMENTS

Act of 1901 provided for ten per centum rate rather than eight, and act of 1902 provided for no greater rate than six per centum.

The 1920 amendment changed the proviso to refer to the Money Lenders Act of 1913 rather than the act of Mar. 2, 1889, relating to pawnbrokers.

## NOTES TO DECISIONS

## BONUS AS USURY

Note or obligation is affected with usury if principal makes the loan, knowing that his agent has exacted a bonus or commission, though for his own sole benefit, which, with the interest payable to the principal, would amount to more than the rate permitted by law. *Richards v. Bippus* (18 App. D. C. 293).

## KNOWLEDGE OF HOLDER

One who acquires promissory notes with knowledge of usury in their inception is not a bona fide holder for value. *Mollohan v. Masters* (45 App. D. C. 414, cert. den. 242 U. S. 652, 61 L. Ed. 546, 37 Sup. Ct. 245).

## LAWS APPLICABLE TO CONTRACT

Usurious contract examined and held to be subject to laws of District of Columbia, although expressly declared to be made pursuant to laws of Virginia. *Washington Nat. Bldg. & Loan Assn. v. Pifer* (31 App. D. C. 434, 14 Ann. Cas. 734), citing *Croissant v. Empire State Realty Co.* (29 App. D. C. 538).

## OCCASIONAL LOANS ON REAL ESTATE

A nonresident who makes occasional loans on real estate is not engaged "in the business" of loaning money within the meaning of the Loan Shark Law. *Zirkle v. Daly* (60 App. D. C. 344, 54 Fed. (2d) 455).

## PURCHASE AT DISCOUNT

A purchase of negotiable paper in market overt "at a heavy discount below the face value" does not show usury. *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

## SET-OFF

Usurious interest cannot be set off against the principal debt. *Presbrey v. Thomas* (1 App. D. C. 171).

When usurious interest has been paid or taken, the sole and exclusive remedy for the borrower is by a suit within 12 months to recover the amount of the usury; and the usurious interest could not be made the subject of set-off or counterclaim, when after the lapse of 12 months suit is instituted for the recovery of the principal claim. *Lawrence v. Middle States Loan Bldg. & Constr. Co.* (7 App. D. C. 161).

"A defense of usury good against one obligation will not constitute a valid offset against a distinct and independent obligation, though between the same parties." *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

Under the Code, "if suit is brought on the principal debt after payment of usurious interest, such usury may be made a valid set-off against the principal debt. Usury upon obligations paid and canceled can not be used as a set-off against a subsequent obligation even between the same parties, either in law or in equity." *Metropolitan Loan & Trust Co. v. Schafer* (44 App. D. C. 356).

## "USURY" DEFINED

Money exacted by the lender from the borrower for the use of money in excess of the legal rate allowed by statute is usury under whatever name or pretense the exaction, extension, or forbearance may be designated. *Von Rosen v. Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

## § 28-2704 [17: 4]. Action to recover usury paid—Limitation.

If any person or corporation in the District shall directly or indirectly take or receive any greater amount of interest than is herein declared to be lawful, whether in advance or not, the person or corporation paying the same shall be entitled to sue for and recover the amount of the unlawful interest so paid from the person or corporation receiving the same, provided said suit be begun within one year from the date of such payment. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1181.)

## CROSS REFERENCE

See notes to § 28-2703.

## NOTES TO DECISIONS

## COMMISSIONS DEDUCTED IN ADVANCE

Commissions deducted in advance by the lender constitute usury. *Von Rosen v. Dean* (59 App. D. C. 359, 41 Fed. (2d) 982).

## INTEREST FORFEITED

Whole of the interest contracted to be paid by the terms of the trust is forfeited as usury when the trust deed for amount in addition to the loan was payable to an intermediary who professed to sell the same to the actual lender. *Quinn v. National Mtg. & Inv. Co.* (61 App. D. C. 44, 57 Fed. (2d) 410).

## REPAYMENT OF LOAN

One-year limitation runs, not from the time that usurious interest may have been deducted, but from the time the last payment was made. "Until that time the full amount of the deduction had not been paid by her. There could be no usurious interest collected until the appellee had paid the full amount she received, together with legal interest." *Brown v. Slocum* (30 App. D. C. 576).

## § 28-2705 [17: 5]. Unlawful interest to be credited on principal debt—Bona fide indorsee of negotiable paper.

In any action brought upon any contract for the payment of money with interest at a rate forbidden by law, as aforesaid, any payments of interest that may have been made on account of said contract shall be deemed and taken to be payments made on



account of the principal debt, and judgment shall be rendered for no more than the balance found due after deducting and properly crediting the interest so paid; but no bona fide indorsee of negotiable paper purchased before due shall be affected by any usury exacted by any former holder of said paper unless he had notice of the usury before his purchase. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1182; June 30, 1902, 32 Stat. 542, ch. 1329.)

#### AMENDMENT

This act of 1902 amended the 1901 act by striking out the words "in excess of the lawful interest," following the words "said contract."

#### CROSS REFERENCE

See notes to § 28-2703.

#### NOTES TO DECISIONS

##### INNOCENT HOLDERS FOR VALUE

No relief to borrowers of money at usurious rates against innocent holders for value. *Whipp v. Glueck* (61 App. D. C. 118, 58 Fed. (2d) 523).

##### MAKER OF NEW NOTES

Quaere, whether maker of new notes to take the place of former usurious notes to which he was a party can take advantage of 1901 Code, § 1182 (this section) and plead usury as a defense to all except the principal sum due. *King v. Curtin* (31 App. D. C. 23).

#### § 28-2706 [17: 6]. Parties may be made to testify.

Whenever in any action to recover a debt the defendant shall claim that payments of unlawful interest on said debt have been made to said plaintiff or those under whom he claims, which the defendant is entitled to have credited on the principal of the debt, the plaintiff or the party who received said unlawful interest may be examined as a witness to prove the payment of the same, and shall not be excused from testifying in relation thereto, nor shall a creditor who is made defendant to a bill in equity exhibited against him for discovery as to payments of unlawful interest made to him be excused from answering as to the same. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1183.)

#### § 28-2707 [17: 7]. Interest on judgments for liquidated debt.

In an action in the District Court of the United States for the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1184.)

#### NOTES TO DECISIONS

##### ASSESSMENT BY COURT

"We do not mean by this to rule that, in a case where no question is made by either the pleadings or evidence as to the payment of interest, the court would not be authorized, under the provisions of said section 1184 (this section), to direct the assessment of interest. In such a situation the finding of the jury would, under the statute, automatically carry interest." *Metzger v. Metzger* (35 App. D. C. 389).

##### COMPENSATION OF SPECIAL AUDITOR

It is the prevailing view that costs do not bear interest unless so provided by statute, and this section does not apply to special auditor upon decree of compensation.

*Davis v. Fidelity & Deposit Co.* (63 App. D. C. 395, 73 Fed. (2d) 118).

#### INTEREST NOT DEMANDED

This section and § 28-2708 do not charge a surety of government contractor with interest on claims of materialmen when there was no request or demand made. *London & Lancashire Indem. Co. v. Smoot* (52 App. D. C. 378, 287 Fed. 952).

#### REFORMING THE VERDICT

Where in a suit on a promissory note for \$2,500 (with interest at 6 per centum) the defendant files a plea of the general issue and the statute of limitations, and the jury returns a verdict for the plaintiff "in the sum of \$2,500 and costs," the court, on appeal (in the absence of a bill of exceptions containing the evidence introduced), will reverse the action of the trial justice in reforming the verdict so as to include interest. *Metzger v. Metzger* (35 App. D. C. 389).

#### TERMINATION OF CONTRACT

Under the statute regulating interest and punishing usury, and the rule that prescribes the running of the legal rate after maturity, all that the plaintiff was entitled to recover was the principal sum, with interest at the legal rate after the termination of the contract rate, less the credits which she had admitted. *Richards v. Bippus* (18 App. D. C. 293).

#### § 28-2708 [17: 8]. Interest on judgments for damages in actions in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1185.)

#### CROSS REFERENCE

See notes to § 28-2707.

#### NOTES TO DECISIONS

##### SPECIAL AUDITOR

Special auditor cannot recover interest upon decree of compensation, as this section provides an action to recover damages for breach of contract. *Davis v. Fidelity & Deposit Co.* (63 App. D. C. 395, 73 Fed. (2d) 118).

##### TRUSTEE

A trustee who purchases a second trust deed note at discount and thereafter purchases at his own foreclosure sale, attempting to enforce his personal lien, is nevertheless acting as trustee and beneficiary is entitled to an accounting of all profits on the sale as well as of interest and principal payments to trustee; trustee is entitled to reimbursement for reasonable and lawful expenses incurred and to interest on unpaid loan to trust. *Earll v. Picken* (— App. D. C. —, 113 Fed. (2d) 150).

#### § 28-2709 [17: 9]. Interest on judgment in suits on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in any State or Territory of the United States where such contract rate of interest is lawful, the judgment for the plaintiff shall include such contract interest to the date of the judgment and interest thereafter at the rate of six per centum per annum until paid. (Mar. 3, 1901, 31 Stat. 1378, ch. 854, § 1186.)



## Chapter 28.—COMPUTATION OF TIME

Sec.

28-2801. Calendar established.

28-2802. Leap year.

28-2803. Leap year—Extra day and preceding day to be accounted one day.

## § 28-2801 [19: 111]. Calendar established.

The supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, shall not be made use of from and after the last day of December one thousand seven hundred and fifty-one; and the first day of January next following the said last day of December shall be reckoned, taken, deemed and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-two; and the first day of January, which shall happen next after the said first day of January one thousand seven hundred and fifty-two, shall be reckoned, deemed, taken and accounted to be the first day of the year of our Lord one thousand seven hundred and fifty-three; and so on, from time to time, the first day of January in every year, which shall happen in time to come, shall be reckoned, taken, deemed and accounted to be the first day of the year; and that each new year shall accordingly commence, and begin to be reckoned, from the first day of every such month of January next preceding the twenty-fifth day of March, on which such year would, according to the Julian calendar, have begun or commenced: and that from and after the said first day of January one thousand seven hundred and fifty-two, the several days of each month shall go on, and be reckoned and numbered in the same order; and the feast of Easter, and other moveable feasts thereon depending, shall be ascertained according to the same method, as they were under the Julian calendar until the second day of September in the said year one thousand seven hundred and fifty-two inclusive; and that the natural day next immediately following the said second day of September, shall be called, reckoned and accounted to be the fourteenth day of September, omitting for that time only the eleven intermediate nominal days of the common calendar; and that the several natural days, which shall follow and succeed next after the said fourteenth day of September, shall be respectively called, reckoned and numbered forwards in numerical order from the said fourteenth day of September, according to the order and succession of days used in the Julian calendar; and that all acts, deeds, writings, notes and other instruments of what nature or kind soever, whether ecclesiastical or civil, public or private, which shall be made, executed or signed, upon or after the said first day of January one thousand seven hundred and fifty-two, shall bear date according to the said new method of supputation. (24 Geo. II, ch. 23, § 1, 1751; Kilty's Rep., p. 252; Alex. Brit. Stat., p. 768.)

## COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

## § 28-2802 [19: 112]. Leap year.

For the continuing and preserving the calendar or method of reckoning, and computing the days of the

year in the same regular course, as near as may be, in all times coming; the several years of our Lord, one thousand eight hundred, one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other hundredth years of our Lord, which shall happen in time to come, except only every fourth hundredth year of our Lord, whereof the year of our Lord two thousand shall be the first, shall not be esteemed or taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days, and no more; and that the years of our Lord two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundred year of our Lord, from the said year of our Lord two thousand inclusive, and also all other years of our Lord, which by the Julian calendar are esteemed to be bissextile or leap years, shall for the future, and in all times to come, be esteemed and taken to be bissextile or leap years, consisting of three hundred and sixty-six days, in the same sort and manner as was used under the Julian calendar. (24 Geo. II, ch. 23, § 2, 1751; Alex. Brit. Stat., p. 770.)

## CROSS REFERENCE

See Compiler's Note to § 28-2801.

## § 28-2803 [19: 113]. Leap year—Extra day and preceding day to be accounted one day.

The day increasing in the leap-year shall be accounted for one year, so that because of that day none shall be prejudiced that is impleaded, but it shall be taken and reckoned of the same month wherein it groweth; and that day, and the day next going before, shall be accounted for one day. (21 Henry III, 1236; Kilty's Rep., p. 208; Alex. Brit. Stat., p. 36; Comp. Stat., D. C., p. 212, § 94.)

## CROSS REFERENCE

See Compiler's Note to § 28-2801.

## FEDERAL LAWS

Relating primarily to interstate commerce but applicable also to commerce in the District of Columbia

AGRICULTURAL MARKETING AGREEMENT ACT of June 3, 1937, U. S. C., Supp., title 6, § 610.

GRAIN FUTURES ACT of Sept. 21, 1922, U. S. C., title 7, §§ 1-17.

UNITED STATES COTTON STANDARDS ACT of Mar. 4, 1923, U. S. C., title 7, §§ 51-65.

GRAIN STANDARDS ACT of Aug. 11, 1916, U. S. C., title 7, §§ 71-87.

NAVAL STORES ACT of Mar. 3, 1923, U. S. C., title 7, §§ 91-99.

IMPORTATION OF ADULTERATED SEEDS ACT of Apr. 26, 1926, U. S. C., title 7, §§ 111-116.

INSECTICIDE ACT of Apr. 26, 1910, U. S. C., title 7, §§ 121-134.

INSECT PESTS, eradication, Act of 1905, U. S. C., title 7, §§ 141-147.

NURSERY STOCK, regulatory law of Aug. 20, 1912, U. S. C., title 7, §§ 151-167.

PACKERS AND STOCKYARDS ACT of Aug. 15, 1921, U. S. C., title 7, §§ 181-229.

FARM PRODUCE, antidumping, Act of Mar. 3, 1927, U. S. C., title 7, §§ 491-497.

PERISHABLE AGRICULTURAL COMMODITIES ACT of June 10, 1930, U. S. C., title 7, §§ 499a-499r.

TOBACCO INSPECTION ACT of Aug. 23, 1935, U. S. C., Supp., title 7, §§ 511-511q.



AGRICULTURAL ADJUSTMENT ACT of Feb. 13, 1938, U. S. C., Supp., title 7, § 1301.

FEDERAL SEED ACT of Aug. 9, 1939, U. S. C., Supp., title 7, §§ 1551-1610.

UNITED STATES ARBITRATION ACT of Feb. 12, 1925, U. S. C., title 9, §§ 1-15.

CLAYTON ANTITRUST ACT of Oct. 15, 1914, U. S. C., title 15, § 12 et seq.

FEDERAL TRADE COMMISSION ACT of Sept. 26, 1914, U. S. C., title 15, §§ 41-51.

EXPORT TRADE ACT of Apr. 10, 1918, U. S. C., title 15, §§ 61-66.

SECURITIES ACT of May 27, 1933, U. S. C., title 15, §§ 77b-77mm.

SECURITIES EXCHANGE ACT of 1934, U. S. C., title 15, §§ 78a-78ii.

INVESTMENT COMPANY ACT of 1940, U. S. C., title 15, § 80a-1 et seq.

STANDARD BARREL ACT of Mar. 4, 1915, U. S. C., title 15, §§ 234-236.

FEDERAL CAUSTIC POISON ACT of Mar. 4, 1927, U. S. C., title 15, §§ 402-411.

DISCRIMINATION AGAINST FARMERS' COOPERATIVES by Boards of Trade, U. S. C., title 15, §§ 431-433.

INVESTMENT ADVISERS ACT of 1940, U. S. C., title 15, § 806-1 et seq.

FEDERAL FIREARMS ACT of June 30, 1938, U. S. C., Supp., title 15, §§ 901-909.

WHITE SLAVE TRAFFIC ACT of June 25, 1910, U. S. C., title 18, §§ 397-404.

APPLE STANDARD ACT of Aug. 3, 1912, U. S. C., title 21, §§ 20-23.

FILLED MILK ACT of Mar. 4, 1923, U. S. C., title 21, §§ 61-63.

ANIMALS, sale of virus, serums and the like for the treatment, U. S. C., title 21, §§ 151-153.

FOOD, DRUG AND COSMETIC ACT of June 25, 1938, U. S. C., title 21, §§ 301-392.

FEDERAL ALCOHOL ADMINISTRATION ACT of Aug. 29, 1935, U. S. C., Supp., title 27, § 201 et seq.

NATIONAL LABOR RELATIONS ACT of July 5, 1938, U. S. C., Supp., title 29, §§ 151-166.

LOCOMOTIVE BOILER INSPECTION ACT of Feb. 17, 1911, U. S. C., title 45, §§ 22-34.

RAILWAY LABOR ACT of May 20, 1926, U. S. C., title 45, § 151 et seq.

INTERSTATE COMMERCE ACT, as amended, U. S. C., title 49, § 1 et seq.

BILLS OF LADING ACT of Aug. 29, 1916, U. S. C., title 49, §§ 81-124.

AIR COMMERCE ACT of May 20, 1926, U. S. C., title 49, § 171 et seq.

CIVIL AERONAUTICS ACT of June 23, 1938, U. S. C., Supp., title 49, § 401 et seq.

WATER CARRIERS ACT of Sept. 18, 1940, U. S. C., title 49, § 901 et seq.



## TITLE 29.—CORPORATIONS

Chap.	Sec.
1. General provisions.....	29-101
2. Business corporations.....	29-201
3. Boards of trade.....	29-301
4. Institutions of learning.....	29-401
5. Religious societies.....	29-501
6. Charitable, educational, and religious associations.....	29-601
7. Dissolution.....	29-701
8. Cooperative associations.....	29-801

### Chapter 1.—GENERAL PROVISIONS

Sec.	
29-101.	Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.
29-102.	Notice of application for, alteration to, or extension of charter or special privileges.
29-103.	Change of name—Procedure—Effect—Notice—Recording.
29-104.	Capital stock to be subscribed and 10 percent paid before certificate is recorded.
29-105.	Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

#### § 29-101 [5: 1]. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.

Any corporation existing or doing business in the District of Columbia prior to January 1, 1902, may come under and avail itself of the provisions of this title by giving to its stockholders, members, or associates notice as prescribed in section 29-231 and pursuing the same procedure and complying with the same requirements as are prescribed in this title in respect to increase or diminution of capital stock; and upon filing its certificate of reorganization in such case, such company shall be entitled to the privileges and provisions and be subject to the liabilities of the class of corporations to which it belongs, as provided in and by this title. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 766.)

#### § 29-102 [5: 2]. Notice of application for, alteration to, or extension of charter or special privileges.

Whoever, not being a Senator or Representative in Congress, intends to present to Congress a bill for an act of incorporation, or for an alteration or extension of the charter of a corporation in the District of Columbia, or of any special privileges in said District, shall give notice of such intention by publishing a copy of the bill at least once a week for four successive weeks, in a newspaper published in the District of Columbia, the last of said publications to be made at least fourteen days prior to the presentation of such bill. Such newspaper shall be designated by the person proposing the bill and approved by the commissioners of the District of

Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 767.)

#### § 29-103 [5: 3]. Change of name—Procedure—Effect—Notice—Recording.

Any corporation organized under the laws of the District of Columbia may change its name in the manner following:

The board of directors shall pass a resolution declaring that such change is advisable and calling a meeting of the stockholders to take action thereon. Such a meeting shall be called upon such notice as the by-laws provide, and in the absence of such provision upon ten days' notice given personally to each stockholder as his address is contained in the records of such corporation, a notice deposited in the United States mail, postage prepaid, at least ten days prior to such meeting to be considered sufficient notice under this section. If two-thirds in interest of each class of stockholders having voting powers and of other persons having like powers shall vote in favor of such a change, a certificate thereof shall be signed by the president and secretary, under the corporate seal, and acknowledged as in the case of deeds of real estate, and such certificate shall be filed in the office of the recorder of deeds of the District of Columbia, and upon the filing of the same the certificate of incorporation shall be deemed to be amended and the name changed accordingly; and the filing of said certificate in conformity with this section shall have the same force and effect as to all future proceedings as if said certificate of incorporation or organization had been originally drafted in conformity with the amendment so made.

A certified copy of such certificate shall be taken and accepted as evidence in all courts and places of all matters legally stated therein; and the recorder of deeds shall keep an index in his office showing the new name and the change from the old name, and the old name showing the change to the new name; and no fees shall be required by the recorder of deeds for filing and recording any such certificate, except that ordinarily required for deeds of real estate of like length.

A corporation under its new name shall have the same rights, powers, and privileges, and shall be subject to the same duties, obligations, and liabilities as before, and may sue and be sued by its new name, but no action brought against it or by it under its former name shall be abated on that account, and on motion of either party the new name may be substituted therefor in the action.

Upon the filing of said certificate for record a copy thereof shall be inserted, by the corporation whose name has been changed as hereinabove provided, once each week for four consecutive weeks,



in two daily papers published in the District of Columbia. (Mar. 1, 1921, 41 Stat. 1194, ch. 94.)

#### CROSS REFERENCE

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29-238 to 29-240.

§ 29-104 [5: 4]. Capital stock to be subscribed and 10 percent paid before certificate is recorded.

The recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than ten per cent. of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Feb. 4, 1905, 33 Stat. 689, ch. 299.)

#### COMPILER'S NOTE

This section qualifies § 29-209, which section authorizes payment in money or in property at its actual value.

§ 29-105 [5: 5]. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

Except as otherwise provided in sections 26-101, 29-213, and 35-103, any insurance company, building association or company, banking company, savings institution, or other company or association advertising for or receiving premiums, deposits, or dues for membership, incorporated under the laws of any other State, Territory, or foreign government, and transacting business within the District of Columbia, shall publish in at least two daily papers printed in the District of Columbia semiannually, during the months of March and September of each year, a full statement, under oath, showing their capital stock and the amount paid in on account of the same, assets, liabilities, debts, deposits, dividends and dues, as well as their current expenses during six months ending January and July preceding.

Any such company, association, or institution failing to publish statements as required by this section shall forfeit its right to do business in said District, and thereupon it shall be the duty of said Commissioners to revoke its license or permit to do business in said District: *Provided*, That fraternal beneficiary associations or societies doing business on the lodge plan and paying death benefits be exempted from the provisions of this section. (July 29, 1892, 27 Stat. 325, ch. 321, §§ 1, 2.)

### Chapter 2.—BUSINESS CORPORATIONS

#### Sec.

- 29-201. Formation—Certificate — Exception — Dealing in real estate.
- 29-202. Contents of certificate.
- 29-203. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.
- 29-204. Trustees—Qualifications—Election.
- 29-205. Election of trustees—Notice—Procedure.
- 29-206. Corporation not dissolved by failure to hold election of trustees at time designated in bylaws.
- 29-207. Officers—Bond.
- 29-208. Bylaws
- 29-209. Authority to do business—Calls—Forfeiture—Notice.

#### Sec.

- 29-210. Stock to be personal property—Manner of transfer to be prescribed by bylaws—No transfer until previous call is paid.
- 29-211. Liability of stockholders.
- 29-212. Certificate of capital stock paid in—Recording.
- 29-213. Annual report of stock and debts—Verification—Publication.
- 29-214. Failure to publish annual report—Mandamus by creditor—Expenses of action.
- 29-215. Liability of officers for false report.
- 29-216. Purchase of stock of other companies unlawful.
- 29-217. Loans to stockholders—Liability of officers.
- 29-218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.
- 29-219. Trustees objecting to such dividends and filing certificate exempt from personal liability.
- 29-220. Executors, administrators, guardians, and trustees not personally liable.
- 29-221. Executor, administrator, guardian, or trustee shall represent and vote.
- 29-222. Pledges of stock—Pledgee not liable as stockholder—Right to vote.
- 29-223. Stock book to be kept by treasurer or secretary.
- 29-224. Stock books open for inspection.
- 29-225. Effect of stock book record—Company—Creditors—Subsequent purchasers.
- 29-226. Stock books presumptive evidence of facts stated therein
- 29-227. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.
- 29-228. Liability to United States for neglect to keep books open.
- 29-229. Increase or diminution of stock—Extending of business.
- 29-230. Diminution of capital stock when debts exceed proposed capital.
- 29-231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.
- 29-232. Representatives of two-thirds of stock to be present.
- 29-233. Certificate by chairman—Contents—Verification.
- 29-234. Certificate to be filed—Effect.
- 29-235. Two-thirds vote required.
- 29-236. Copy of certificate to be evidence.
- 29-237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.
- 29-238. Amendment of charter—Procedure—Purposes.
- 29-239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.
- 29-240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

§ 29-201 [5: 261]. Formation—Certificate—Exception—Dealing in real estate.

Any three or more persons who desire to form a company for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the recorder of deeds, a certificate in writing: *Provided*, That nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 605; June 30, 1902, 32 Stat. 533, ch. 1329.)



## AMENDMENT

The 1902 amendment struck out the words "corporations to buy, sell, or deal with real property" following the words "banks of circulation or discount," and added the proviso.

## CROSS REFERENCES

Banking corporations and financial institutions, see title 26.

Building and homestead associations to be incorporated under this chapter, § 26-401.

Insurance corporations, see title 35.

Merger of street railway; new company to be formed under this chapter, § 43-503.

Public utilities, see title 43.

Railroads and other carriers, see title 44.

## NOTES TO DECISIONS

## IN GENERAL

Insofar as the general incorporation statutes passed by Congress for the District are concerned, these provide for the incorporation of both business corporations and benevolent corporations. *White v. Central Dispensary & Emergency Hosp.* (69 App. D. C. 122, 99 Fed. (2d) 355, 119 A. L. R. 1002).

## CAPACITY TO SUE AND BE SUED

Defendant corporation is in general capable of suing and being sued, regardless of whether part or all of its stock is owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Miss.), 267 Fed. 283).

## EMERGENCY FLEET CORPORATION

In form the Emergency Fleet Corporation is a private corporation, but its services are of a public nature and it has never done any business, or conducted any operation, except on behalf of the United States. *United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198, revg. 56 App. D. C. 337, 13 Fed. (2d) 308).

Fleet Corporation was entitled to the Government rate, not because it was an instrumentality of the Government, but because it was a department of the United States within the meaning of the Post Roads Act. In respect to messages sent, on the Government's business, no distinction could properly be made between those of the Shipping Board and those of the Fleet Corporation. *United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198).

When shipbuilding company sued the United States Shipping Board Emergency Fleet Corporation upon an alleged contract for the building of ships, which, it was alleged, it was not allowed to build; it was a suit arising under the Constitution and laws of the United States and motion to remand should be denied. *Union Timber Products Co. v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C. Wash.), 252 Fed. 320).

"The board (Shipping Board), if in its judgment such action is necessary to carry out the purposes of this act, may form under the laws of the District one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States." *Southern Bridge Co. v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Ala.), 266 Fed. 747).

Business of the Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers not essentially different from those possessed by private corporations. No provision can be found either in acts of Congress or in charter of the company giving to the corporation or its stockholders any rights, privileges, or obligations different from those possessed by any other corporation under laws of the District with respect to its business. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

Object and purpose of the corporation was to purchase, construct, equip, lease, maintain, and operate vessels in the commerce of the United States and for other lawful purposes. *Buffalo Union Furnace Co. v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-N. Y.), 283 Fed. 673).

Fleet Corporation acted in two capacities. Notwithstanding the ownership of its stock by the United States, it was a private corporation. As such it was a distinct entity. It might make contracts and transact the business for which it was organized. It might sue and be sued, and then it was subject to the statute of limitations. *Harwood v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Conn.), 26 Fed. (2d) 116).

## EXTENSION OF BUSINESS

The 1901 code, §§ 633 and 635 (§§ 29-229, 29-231), providing for the extension of the business of the corporation, cannot be so construed as to permit a combination of two radically different classes of business. *Dancy v. Clark* (24 App. D. C. 487).

## NATURE OF BUSINESS

This section does not authorize or allow the combination of all classes of industrial business by one corporation. "On the contrary, the tenor of the enactment is decidedly adverse to any such theory." *Dancy v. Clark* (24 App. D. C. 487).

The statute allows formation of corporation for only "one business, one enterprise, and not a combination of all the classes of business provided for in the statute." *Dancy v. Clark* (24 App. D. C. 487).

"No domestic corporation is authorized to hold real estate except as an incident to its business. It clearly is not authorized to hold it for the purpose of selling or dealing in it." *Groo v. Norman* (42 App. D. C. 387).

A foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations. Nevertheless "want of capacity in a domestic or foreign corporation to own and dispose of real estate can only be asserted by the State," and until so questioned good title may be conveyed. *Hight v. Richmond Park Imp. Co.* (47 App. D. C. 518), citing *Groo v. Norman* (42 App. D. C. 387).

The proviso "neither declares contracts made in violation of its terms void as against public policy nor does it expressly apply this restriction to foreign corporations doing business in this District." *Hight v. Richmond Park Imp. Co.* (47 App. D. C. 518).

## § 29-202 [5: 262]. Contents of certificate.

In such certificate shall be stated—

First. The corporate name of the company and the object for which it is formed.

Second. The term of its existence, which may be perpetual.

Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

Fourth. The number of trustees who shall manage the concerns of the company for the first year and their names.

Fifth. The name of the place in the District in which the operations of the company are to be carried on. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 606.)

## CROSS REFERENCES

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29-238 to 29-240.

Extension of object of business, see note to § 29-201.

## § 29-203 [5: 263]. Formation—Signers of certificate incorporated—Name—Powers—Mortgages or liens on property to be approved by stockholders.

When the certificate shall have been filed, in accordance with the provisions of section 29-202, the persons who shall have signed and acknowledged the same and their successors shall be a body politic and corporate in fact and in name, by the names stated in such certificate, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal and make and alter the same at pleasure, and they shall by



their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificates, but shall not mortgage such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 607.)

#### COMPILER'S NOTE

The 1901 act refers to the preceding section which is § 29-202. However, for necessity for filing the certificate, see § 29-201.

#### CROSS REFERENCES

Conveyances of real estate, formal requisites, § 45-302.  
Fire insurance companies may become perpetual, § 29-237.

Increase or diminution of stock, extension of business, § 29-229 to 29-237.

Indorsement of negotiable instrument passes title though corporation or officers lacked capacity, § 28-123.

Quo warranto proceedings to question right to corporate rights and franchises, § 16-1601 et seq.

Restrained from doing business upon second conviction of operating a bucket-shop, § 22-1510.

#### NOTES TO DECISIONS

##### IN GENERAL

This section does not put District corporations upon a different footing from those formed under the laws of the States. *Sloan Shipyards Corp. v. United States Shipping Board* (258 U. S. 549, 66 L. Ed. 762, 42 Sup. Ct. 386).

##### EMERGENCY FLEET CORPORATION

The Emergency Fleet Corporation was in general capable of suing and being sued, regardless of whether part or all of its stock was owned by the United States. *Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp.* ((D. C.-Miss.), 267 Fed. 283).

Business of the Emergency Fleet Corporation was not peculiarly governmental in its nature, but was commercial and industrial, and its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

#### § 29-204 [5: 264]. Trustees—Qualifications—Election.

The stock, property, and concerns of such company shall be managed by not less than three nor more than fifteen trustees, who shall, respectively, be stockholders, and a majority citizens of the District, and shall, except for the first year, be annually elected by the stockholders, at such time and place as shall be determined by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 603.)

#### NOTES TO DECISIONS

##### CORPORATE ACTS—EVIDENCE OF INTENTION

A corporation can only act through its agents, directors, or trustees and its intention can only be learned by the language of its recorded acts. The plain terms of a resolution of the board of directors cannot be altered by an affidavit purporting to show its intention. *Fox v. Johnson* ((D. C.-D. C.), 31 Fed. Supp. 64).

##### EMERGENCY FLEET CORPORATION

Although most of the stock was owned by the United States, the business of the fleet corporation was not peculiarly governmental in its nature, but was commercial and industrial, and that its powers were not essentially different from those possessed by private corporations. *In re Eastern Shore Shipbuilding Corp.* ((C. C. A. 2), 274 Fed. 893).

##### EXCHANGE OF STOCK

When insurance company sold a building to realty company, for whose stock the insurance company's stock-

holders were allowed to exchange their stock, and as terms would not cause substantial loss to the stockholders, their stock was not illegal or void under this section which gives trustees power to manage the affairs of the corporation. *Tryson v. Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

##### LIABILITY FOR DEBTS

Under the act of Congress (16 Stat. 98, ch. 80), under which certain corporations were organized in the District of Columbia, providing for personal liability of trustees for debts in excess of capital stock, an action at law could not be sustained by one creditor among many for the liability thus created, or for any part of it, but the remedy is in equity. Also, this excess constitutes a fund for the benefit of all the creditors, so far as the condition of the company renders a resort to it necessary for the payment of their debts. *Hornor v. Henning* (93 U. S. 228, 23 L. Ed. 879).

Under the act of May 5, 1870 (16 Stat. 98), providing for the organization of associations and the liability of trustees for indebtedness exceeding the capital stock, and the act of June 17, 1870 (16 Stat. 153), authorizing the establishment of savings banks under the former act, the excess of debts for which the trustees were liable constituted a trust fund for the benefit of all creditors, and an action at law could not be maintained by one creditor for any part of it, but the remedy was in equity. *Hornor v. Henning* (93 U. S. 228, 23 L. Ed. 879).

##### STOCKHOLDERS

"Plainly the requirement of this section is that the trustees shall at all times be stockholders, as well for the first year as for all subsequent years." *Dancy v. Clark* (24 App. D. C. 487).

#### § 29-205 [5: 265]. Election of trustees—Notice—Procedure.

Public notice of the time and place of holding such election shall be published not less than thirty days previous thereto in some newspaper printed and published in the District, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 609.)

#### § 29-206 [5: 266]. Corporation not dissolved by failure to hold election of trustees at time designated in bylaws.

In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided by the by-laws, and all acts of trustees shall be valid and binding as against said company until their successors shall be elected. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 610.)

#### § 29-207 [5: 267]. Officers—Bond.

There shall be a president of the company, who shall be designated from the trustees; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office,



as the company by its by-laws may require. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 611.)

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16-1601 et seq.

§ 29-208 [5: 268]. Bylaws.

The trustees shall have power to make such prudential by-laws as they deem proper for the management and disposal of the stock and business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, artificers, and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (Mar. 3, 1901, 31 Stat. 1285, ch. 854, § 612.)

§ 29-209 [5: 269]. Authority to do business—Calls—Forfeiture—Notice.

No company incorporated under this chapter shall be authorized to transact any business until ten per centum of the capital stock shall have been actually paid in, either in money or in property at its actual value; and it shall be lawful for the trustees to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published for six successive weeks in a newspaper in the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 613.)

#### COMPILER'S NOTE

The words "either in money or in property at its actual value" are qualified by § 29-104, requiring that the initial 10% be "actually paid in cash."

#### STATUTORY REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

§ 29-210 [5: 270]. Stock to be personal property—Manner of transfer to be prescribed by bylaws—No transfer until previous call is paid.

The stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 614.)

#### NOTES TO DECISIONS

##### SUIT FOR UNPAID SUBSCRIPTION

Subscribers to stock must be sued severally to recover unpaid subscriptions. *Peoples Nat. Bank v. Saville* (25 App. D. C. 139, app. dism. 201 U. S. 641, 50 L. Ed. 901, 26 Sup. Ct. 760).

§ 29-211 [5: 271]. Liability of stockholders.

All the stockholders of every company incorporated under this chapter shall be severally individually liable to the creditors of the company in which they are stockholders for the unpaid amount due upon the shares of stock held by them, respectively, for

all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded, as prescribed in the following section 29-212. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 615.)

#### CROSS REFERENCE

Recovery of unpaid subscriptions, see note to § 29-210. *Peoples Nat. Bank v. Saville* (25 App. D. C. 139, app. dism. 201 U. S. 641, 50 L. Ed. 901, 26 Sup. Ct. 760).

#### NOTES TO DECISIONS

##### IN GENERAL

Under this section, the stockholders are individually liable to the creditors for the unpaid amount due upon the shares of stock held by them respectively for the debts and contracts of the company until the amount of capital stock fixed by such company shall have been paid in. *Capitol Dress Mfg. Co. v. Moran* (65 App. D. C. 400, 84 Fed. (2d) 253).

##### CONTRACT OF SUBSCRIPTION

A contract of subscription may be shown without a formal subscription in writing. *National Exp. Co. v. Morris* (15 App. D. C. 262).

To recover on a subscription to the capital stock, the corporation plaintiff must establish, by legal and competent proof, the existence of a contract of subscription to the stock. *National Exp. Co. v. Morris* (15 App. D. C. 262).

##### SALE OF STOCK RESCINDED

Person who purchased stock from corporation under an option to rescind the agreement at the expiration of a year is not precluded from doing so because no power has been given to the corporation to purchase its own stock. *Royal Glue Co. v. Lange* (40 App. D. C. 9).

##### STATUTE OF LIMITATIONS

Statute of limitations begins to run from the time that call is made for payment of unpaid subscription. *Glenn v. Sothoron* (4 App. D. C. 125).

##### TRANSFER OF STOCK

The mere transfer of the stock into the name of the defendant is not sufficient to impose the liability of a stockholder, unless he consents thereto, or subsequently exercises the rights of a stockholder. *National Exp. Co. v. Morris* (15 App. D. C. 262).

##### TRUST FUND

Capital stock of a corporation is a trust fund for the benefit of the creditors, and which cannot be withdrawn without their consent, but the corporation may when solvent hold the property as an individual, free from the touch of a creditor who has acquired no lien, and may dispose of stock to bona fide purchasers for a valuable consideration. *Gilbert v. Washington Ben. Endowment Assn.* (10 App. D. C. 316, app. dism. 173 U. S. 701, 43 L. Ed. 1185, 19 Sup. Ct. 877).

§ 29-212 [5: 272]. Certificate of capital stock paid in—Recording.

The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited, shall make a certificate stating the amount of the capital so fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall within the said thirty days record the same in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 616.)

#### CROSS REFERENCE

Limitation on recorder to record certificate, § 29-104.



**§ 29-213 [5: 273]. Annual report of stock and debts—Verification—Publication.**

Every such company shall annually, except insurance companies, within twenty days from the first of January, make a report, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid and the amount of existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of the company, and filed in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 617.)

**NOTES TO DECISIONS**

**CONSTRUCTION**

Laws similar to this requiring insurance companies to publish annually a report of their assets and liabilities and making trustees liable for existing corporate debts for failure to fulfill requirements were construed as being penal in their nature and were to be strictly construed. *Jackson v. Clifford* (5 App. D. C. 312).

**§ 29-214 [5: 274]. Failure to publish annual report—Mandamus by creditor—Expenses of action.**

If any company fails to comply with the provisions of section 29-213, any creditor of the corporation or other person interested may by petition for mandamus against the corporation and its proper officers compel such publication to be made, and in such case the court shall require the corporation or the officers at fault to pay all the expenses of the proceeding, including counsel fees. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 618; June 30, 1902, 32 Stat. 533, ch. 1329.)

**AMENDMENT**

Prior to the 1902 amendment this section read as follows: "If any company fails to comply with the provisions of the preceding section, all the trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made."

**§ 29-215 [5: 275]. Liability of officers for false report.**

If any certificate or report made or public notice given by the officers of any company in pursuance of the provisions of this chapter shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all debts of the company contracted while they are stockholders or officers thereof. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 619.)

**§ 29-216 [5: 276]. Purchase of stock of other companies unlawful.**

It shall not be lawful for any company to use any of their funds in the purchase of any stock in any other corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 620.)

**CROSS REFERENCE**

Amendment of charter, additional classes of stock, and transfer of assets as an entirety, §§ 29-238 to 29-240.

**NOTES TO DECISIONS**

**BANK STOCK ILLEGALLY HELD**

This being statement of general policy applicable to all District corporations, claim against insolvent trust company for assessment on shares purchased from another

bank was rejected. *Dunn v. O'Connor* (67 App. D. C. 76, 89 Fed. (2d) 820).

**TRANSFER IN LIQUIDATION**

As appellant had no corporate power to purchase stocks and bonds of the Charles Town Company, a contract to purchase, unless permissible under the Utilities Act, would have been unenforceable because ultra vires. *Washington Gas Light Co. v. Dann* (63 App. D. C. 142, 70 Fed. (2d) 746).

A bank receiving assets of another bank in liquidation is liable for taxes as a transferee notwithstanding this section. *Gould v. Com. Int. Rev.* (21 B. T. A. 824).

**§ 29-217 [5: 277]. Loans to stockholders—Liability of officers.**

No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made, the trustee or officer authorizing the same shall be responsible to the corporation therefor: *Provided*, That nothing herein contained shall be held to release the borrower in such a case from liability to the corporation. (Mar. 3, 1901, 31 Stat. 1286, ch. 854, § 621; June 30, 1902, 32 Stat. 533, ch. 1329.)

**AMENDMENT**

Prior to the 1902 amendment, this section read as follows: "No loan of money shall be made by any company upon the security, in whole or in part, of its own stock; and if any such loan shall be made to a stockholder, the officers who shall make it or who shall assent thereto shall be jointly and severally liable, to the extent of such loan and interest, for all debts of the company contracted while they are stockholders or officers thereof."

**§ 29-218 [5: 278]. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.**

If the trustees of any company shall declare and pay any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing and for all that shall be thereafter contracted while they shall respectively remain in office. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 622.)

**§ 29-219 [5: 279]. Trustees objecting to such dividends and filing certificate exempt from personal liability.**

If any of the trustees shall object to declaring such dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the secretary of the company and with the recorder of deeds of the District, they shall be exempt from the liability prescribed in the preceding section. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 623.)

**§ 29-220 [5: 280]. Executors, administrators, guardians, and trustees not personally liable.**

No person holding stock in such company as executor, administrator, guardian, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the



stock in his own name. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 624.)

§ 29-221 [5: 281]. Executor, administrator, guardian, or trustee shall represent and vote.

Every such executor, administrator, guardian, or trustee shall represent the stock in his hands at all meetings of the company, and may vote accordingly as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 625.)

§ 29-222 [5: 282]. Pledges of stock—Pledgee not liable as stockholder—Right to vote.

No person holding stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 626.)

§ 29-223 [5: 283]. Stock book to be kept by treasurer or secretary.

It shall be the duty of the trustees of every corporation formed under this chapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, the time when they became owners of such shares, and the amount of stock actually paid in. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 627.)

#### NOTES TO DECISIONS

##### IN GENERAL

This section does not apply to corporations not formed under this chapter. *Morgan v. Howard* (54 App. D. C. 3, 293 Fed. 650).

§ 29-224 [5: 284]. Stock books open for inspection.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection of stockholders and creditors of the company and their personal representatives, at the office or principal place of business of such company in the District where its business operations shall be located, and any stockholder, creditor, or representative shall have a right to make extracts from such books. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 628.)

#### NOTES TO DECISIONS

##### PURPOSE OF INSPECTION

Under common law, stockholder can inspect books only when his interests are directly involved, and "it is apparent that in equity and good faith he should be permitted to inform himself as to how the affairs of the corporation are being conducted. \* \* \* Where that right has not been enlarged by statute, it may be exercised only in good faith, and for some just, useful, or reasonable purpose." *Morgan v. Howard* (54 App. D. C. 3, 293 Fed. 650).

§ 29-225 [5: 285]. Effect of stock book record—Company—Creditors—Subsequent purchasers.

A person in whose name shares of stock stand on the books of a company shall be deemed the owner

thereof as regards the company, but if any such person shall in good faith sell, pledge, or otherwise dispose of any of his shares of stock to another and deliver to him the certificate for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale, pledge, or other disposition, not only as between the parties themselves, but also as against the creditors of and subsequent purchasers from the former, subject to the provisions of section 29-210. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 629.)

#### NOTES TO DECISIONS

##### IN GENERAL

The requirement of transfer on the corporate books is intended for the convenience and security of the corporation alone. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

##### CERTIFICATE INDORSED IN BLANK

Stock broker, holding certificate, indorsed in blank, for a limited purpose, may convey good title to innocent purchaser. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

While certificates of stock indorsed in blank "do not become negotiable instruments in a strictly legal sense, they nevertheless so approximate them as that the ordinary rules of agency and estoppel which apply in the case of chattels are applied to them with great liberality in the behalf of an innocent purchaser." *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

##### PLEGDED CERTIFICATE

When stock certificate with written transfer and power of attorney in blank is signed by the person to whom certificate was issued, and is pledged by one in possession to secure preexisting debts, the pledgee is not chargeable with notice of equities which exist between original owner and pledgor. *National Safe Deposit, Sav. & Trust Co. v. Gray* (12 App. D. C. 276).

##### TITLE OF ASSIGNEE

Although corporation may require that transfer of stock be registered on the corporate books, the assignee upon delivery with transfer and power of attorney to transfer on the books, duly executed, takes the entire equitable, if not the legal title thereto. *National Safe Deposit, Sav. & Trust Co. v. Hibbs* (32 App. D. C. 459, affd. 229 U. S. 391, 57 L. Ed. 1241, 33 Sup. Ct. 818).

§ 29-226 [5: 286]. Stock books presumptive evidence of facts stated therein.

Such books shall be presumptive evidence of the fact therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders. (Mar. 3, 1901, 31 Stat. 1287, ch. 854, § 630.)

§ 29-227 [5: 287]. Failure to make entries in or to allow inspection of books—Misdemeanor—Penalty.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of fifty dollars for any such neglect or refusal, and all damages resulting therefrom. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 631.)



§ 29-228 [5: 288]. Liability to United States for neglect to keep books open.

Every company that shall neglect to keep such book open for inspection, as provided in section 29-224, shall forfeit to the United States the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the District Court of the United States for the District of Columbia. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632.)

§ 29-229 [5: 289]. Increase or diminution of stock—Extending of business.

Any company which may be formed under this chapter may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other business authorized hereby, subject to the provisions and liabilities of this chapter. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 633.)

#### CROSS REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

§ 29-230 [5: 290]. Diminution of capital stock when debts exceed proposed capital.

Before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 634.)

§ 29-231 [5: 291]. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.

Whenever any company shall desire to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees or directors to publish a notice, signed by a majority of them, in a newspaper in the District, at least three successive weeks, and to deposit a notice thereof in the post office addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting and the time and place when and where such meeting shall be held. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 635.)

#### NOTES TO DECISIONS

##### CHANGE OF BUSINESS

"Provision is made for a change of business; but even if we assume that this change might be made to a radically different class of business, as for example, from that of mining to that of agriculture, yet the very word 'change' implies the abandonment of the one by the adoption of the other, not the combination of both." *Dancy v. Clark* (24 App. D. C. 487).

##### EXTENSION OF BUSINESS

"Extension of business is the taking in of something cognate." *Dancy v. Clark* (24 App. D. C. 487).

"A company organized for the making of cotton goods might well be extended to the manufacture of woolen goods, possibly even to the manufacture of iron or steel,

for it is all manufacture." *Dancy v. Clark* (24 App. D. C. 487).

§ 29-232 [5: 292]. Representatives of two-thirds of stock to be present.

If, at any time and place specified in the notice provided for in section 29-231, stockholders shall appear by proxy or in person representing not less than two-thirds of all the shares of stock of the corporation, they shall organize and proceed to a vote of those present or by proxy. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 636.)

§ 29-233 [5: 293]. Certificate by chairman—Contents—Verification.

If, on canvassing the votes, it shall appear that a sufficient number of votes are in favor of increasing or diminishing the amount of capital, or extending or changing the business of the company, a certificate of the proceedings, showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 637.)

§ 29-234 [5: 294]. Certificate to be filed—Effect.

Such certificate shall be acknowledged by the chairman, and filed as required by section 29-202, and when so filed the capital stock of such corporation shall be increased or diminished to the amount specified in the certificate, and the business extended or changed accordingly; and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 638.)

#### COMPILER'S NOTE

The 1901 act refers to § 606 thereof which is § 29-202 hereof. However, for necessity for filing certificate, see § 29-201.

§ 29-235 [5: 295]. Two-thirds vote required.

A vote of at least two-third of all the shares of the stock of a company shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 639.)

§ 29-236 [5: 296]. Copy of certificate to be evidence.

A copy of any certificate of incorporation filed in pursuance of this chapter, certified by the recorder of deeds to be a true copy and the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 640.)

§ 29-237 [5: 297]. Fire insurance companies formed prior to January 1, 1902, may become perpetual.

Any company formed prior to January 1, 1902, agreeably by law, for the purpose of carrying on fire insurance, may become perpetual by filing, in the office of the recorder of deeds, a certificate to that effect, in like manner as is provided by law for the



filing of the original certificate of incorporation. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 641.)

#### NOTES TO DECISIONS

##### POWERS AND DUTIES

Filing of the certificate under this section merely extended indefinitely the life of the company, without affecting the scope of its powers and duties. *Morgan v. Howard* (54 App. D. C. 3, 293 Fed. 650).

#### § 29-238 [5: 301]. Amendment of charter—Procedure—Purposes.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29-101, 29-102, may, by pursuing the same procedure and complying with the same requirements as are prescribed in this chapter in respect to the increase or diminution of capital stock, amend its charter so as to accomplish any one or more of the following objects: The addition to or diminution of the corporate purposes and powers, or the substitution of other purposes and powers in whole or in part for those set forth in the charter; the changing of the corporate business; the changing of the location of the place in the District of Columbia in which the operations of the corporation are to be carried on; and the making of any other amendment or amendments, not otherwise provided for under this chapter, of the charter that may be desired, provided such amendment or amendments shall contain only such provisions as it would be lawful or proper to insert in an original certificate of incorporation made at the time of making such amendment or amendments. (Mar. 3, 1901, ch. 854, § 639b, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

##### CROSS REFERENCE

Proceedings for increase or diminution of capital stock, §§ 29-229 to 29-236.

#### § 29-239 [5: 302]. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.

In addition to its common stock every corporation heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29-101, 29-102, may create one or more classes of preferred stock, with such preferences, restrictions, and qualifications not inconsistent with law as shall be expressed in its charter. Such preferred stock shall have such voting powers as are provided in such charter, or it may have no voting power if such charter so provides. Each such corporation may have one or more classes of common stock, with or without voting powers, and with such rights, restrictions, and qualifications as shall be expressed in its charter. The term "charter" is hereby defined to include a charter granted by Special Act, certificate of incorporation, certificate of organization, or certificate of reorganization, either as originally passed or filed or as amended, unless such construction would be inconsistent with the context. Preferred stock of any class may be made subject to redemption at such times and prices as

may be determined in such charter. In the case of stock which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount and terms of such preference shall be stated in the charter. All certificates for stock which has no voting powers or is restricted or limited as to its voting powers, or which is preferred or limited as to its dividends, or as to its share of the assets upon dissolution, shall have a statement of such restriction, limitation, or preference plainly stated thereon. (Mar. 3, 1901, ch. 854, § 639c, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

##### STATUTORY REFERENCE

Sale of securities, U. S. C., title 15, ch. 2a.

#### § 29-240 [5: 303]. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter, or which has availed or may hereafter avail itself of the provisions of this chapter pursuant to sections 29-101, 29-102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of section 29-231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if two or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least five days before the holding of such meeting, may within twenty days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corporation shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within thirty days after such written demand (but not afterwards), against said vendor, lessor, or grantor corporation, in the District Court of the United States for the District of Columbia, a petition for an



accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancellation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in said District Court of the United States for the District of Columbia. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in the District Court of the United States for the District of Columbia. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock: *Provided, however,* That the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to said District Court of the United States for the District of Columbia that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and such purchasing corporation or person shall thereupon immediately file in the office of the recorder of deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of sections 29-715

to 29-718. Nothing contained herein shall affect the provisions of sections 28-1701 to 28-1705, or any of the provisions of chapters 1-10 of title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120.)

#### COMPILER'S NOTE

Sections 28-1701 to 28-1705 is the Bulk Sales Law. Chapters 1-10 of title 43 relate to public utilities.

### Chapter 3.—BOARDS OF TRADE

#### Sec.

- 29-301. Incorporation.
- 29-302. Power to hold real or personal estate.
- 29-303. Officers.
- 29-304. Election of officers—Failure to hold.
- 29-305. Tenure of office.
- 29-306. Bylaws.
- 29-307. Fines—Imposition—Collection.
- 29-308. What business to be carried on.

#### § 29-301 [5: 21]. Incorporation.

Any number of persons, not less than twenty, residing in the District, may associate themselves together as a board of trade, and assemble at any time and place upon which a majority of the members so associating may agree, and elect a president and one or more vice-presidents, as they may see fit, and adopt a name, constitution, and by-laws, such as they may agree upon. Such persons shall thereupon become a body corporate and politic in fact and in name, by the name and style or title which they may have adopted, and by that name shall have succession, shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all the courts of law and equity; and they and their successors shall have a common seal, and may alter and change the same at their discretion. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, §§ 701, 702.)

#### CROSS REFERENCES

Powers, § 29-308.

Quo warranto proceedings to question right to corporate rights and franchises, § 16-1601 et seq.

#### § 29-302 [5: 22]. Power to hold real or personal estate.

Such corporation, by the name and style which shall be adopted, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of the corporation, not exceeding in quantity one city lot and building in the District. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 703.)

#### CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45-302

#### § 29-303 [5: 23]. Officers.

The president, vice-president, secretary, and treasurer shall be ex officio members of the board of directors, and, together with the directors elected, shall manage the business of the corporation. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 704.)

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16-1601 et seq.



## § 29-304 [5: 24]. Election of officers—Failure to hold.

All officers shall be elected by a plurality of votes given at any election, and a general election of officers shall be held at least once in each year; but in case of any accidental failure or neglect to hold such general election the corporation shall not thereby lapse or terminate, but shall continue and exist, and the old officers shall hold over until the next general election of officers provided for in the constitution adopted. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 705.)

## § 29-305 [5: 25]. Tenure of office.

The officers shall hold their offices for the time which shall be prescribed in the constitution adopted by the corporation and until others shall be elected and qualified as prescribed by such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 706.)

## § 29-306 [5: 26]. Bylaws.

Such corporation shall have the right to admit as members such persons as they may see fit, and expel any members as they may see fit; and in all cases a majority of the members present at any stated meetings shall have the right to pass, and also the right to repeal, any by-law of the corporation; and in all cases the constitution and by-laws adopted by the corporation shall be binding upon and control the same until altered, changed, or abrogated in the manner that may be prescribed in such constitution. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 707.)

## § 29-307 [5: 27]. Fines—Imposition—Collection.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before the municipal court, against the person upon whom the fine shall have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708.)

## COMPILER'S NOTE

This section originally provided for collection of fines by action in debt before a justice of the peace. Act February 17, 1909, 35 Stat. 623, ch. 134, changed the name and jurisdiction of the justice of the peace court to the municipal court.

## § 29-308 [5: 28]. What business to be carried on.

Such corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management and conduct of boards of trade or chambers of commerce and is provided for in sections 29-301 to 29-307. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 709.)

## Chapter 4.—INSTITUTIONS OF LEARNING

## Sec.

- 29-401. Organization — Certificate — Contents — Recording.
- 29-402. Incorporation—Signers—Body politic and corporate—Powers.
- 29-403. Corporate powers.
- 29-404. Property to be held for purposes of education.
- 29-405. Application of funds.
- 29-406. Donations, devises, or bequests for particular purposes may be accepted.

## Sec.

- 29-407. Quantity of land which may be held.
- 29-408. Excess holdings of lands to revert on failure of corporation to dispose of same.
- 29-409. Officers.
- 29-410. Treasurer—Bond required.
- 29-411. Annual statement—Content.
- 29-412. Process against corporation.
- 29-413. Quo warranto.
- 29-414. Incorporation fee.
- 29-415. License to confer degrees—Issuance by Board of Education—Evidence required.
- 29-416. Application for license—Recording—Use of public school personnel authorized.
- 29-417. Revocation of license—Hearing before Board of Education—Review by District court.
- 29-418. Title of institution not to imply official connection with government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.
- 29-419. Penalties.

## § 29-401 [5: 231]. Organization — Certificate — Contents—Recording.

Any five or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

First. The name or title by which the institution shall be known in law;

Second. The number of trustees, directors, or managers, and their names;

Third. The particular branch of literature and science, or either of them, proposed to be taught; and,

Fourth. If the institution is to be of the rank of a college or university, the number and designation of the professorships to be established. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 574.)

## CROSS REFERENCES

Columbia Institution for the Deaf, § 31-1001 et seq.  
 Medical and dental colleges, § 31-901 et seq.  
 Religious schools, § 29-512.

## NOTES TO DECISIONS

## DEFINITIONS

Institutions of learning within the meaning of this section are organizations of a permanent nature where instruction is given only in the higher branches of education, and which owe their origin to private or public munificence, and are established not for private gain but for the public good. *Chicago Business College v. Payne* (20 App. D. C. 606).

## § 29-402 [5: 232]. Incorporation—Signers—Body politic and corporate—Powers.

Upon filing such certificate, the persons signing and acknowledging the same and their successors and associates shall be a body politic and corporate, by the name and style stated in the certificate, and by that name and style shall have perpetual succession, with power to sue and be sued, plead and be impleaded; to acquire, hold, and convey property in all lawful ways; to have and use a common seal, and to alter and change the same at pleasure; to make and alter, from time to time, such by-laws not inconsistent



ent with the Constitution of the United States or the laws in force in the District as they may deem necessary for the government of the institution, and to confer upon such persons as may be considered worthy such academical or honorary degrees as are usually conferred by similar institutions. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 575.)

## CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide land, § 7-113.

Conveyances of real estate, formal requisites, § 45-302.

Other provisions as to conferring of degrees, § 29-415.

Quo warranto proceedings questioning right to corporate rights and franchises, § 29-413.

## § 29-403 [5: 233]. Corporate powers.

Such corporation shall be competent in law and equity to take to themselves, in their corporate name, real, personal, or mixed property by gift, grant, bargain and sale, conveyance, will, devise, or bequest of any person whomsoever, and to grant, bargain, sell, convey, demise, let, place out at interest, or otherwise dispose of the same for the use of the institution, in such manner as shall seem most beneficial thereto. (Mar. 3, 1901, 31 Stat. 1281 ch. 854, § 576.)

## CROSS REFERENCE

See notes to § 29-402.

## NOTES TO DECISIONS

## POWER TO CONFER DEGREES

There is nothing in these sections which says that the corporation thus formed shall have the power to confer degrees, or admit its members to degrees, or to issue to its members a certificate pertaining to degrees. *National Assn. of Certified Public Accountants v. United States* (53 App. D. C. 391, 292 Fed. 668).

## TAX EXEMPTION

A corporation organized under these sections is entitled to exemption from real and personal property tax under statute exempting property that is used for educational purposes. *District of Columbia v. Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

## § 29-404 [5: 234]. Property to be held for purposes of education.

Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of themselves or of any contributor to the endowment thereof. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 577.)

## NOTES TO DECISIONS

## USE OF PROPERTY AND INCOME

All of the property of the plaintiff is used for educational purposes. The receipts show a net profit to the institution, but none of this has gone to the incorporators nor to any contributor to its endowment. *District of Columbia v. Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

## § 29-405 [5: 235]. Application of funds.

The trustees, directors, or managers of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting or completing suitable buildings, supporting necessary officers, instructors, and servants, and procuring books, maps, charts, globes, and philosophical, chemical, and other apparatus necessary to the suc-

cess of said institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 578.)

## § 29-406 [5: 236]. Donations, devises, or bequests for particular purposes may be accepted.

In case any donation, devise, or bequest shall be made for particular purposes, in accordance with the designs of the institution, and the corporation shall accept the same, such donation, devise, or bequest shall be applied in conformity with the express condition of the donor or devisor. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 579.)

## § 29-407 [5: 237]. Quantity of land which may be held.

No such corporation shall hold more land at any one time than necessary for the purposes of education, as set forth in its articles of association, unless it shall have received the same by gift, grant, or devise, and in such case the corporation shall be required to sell or dispose of the same within fifteen years from the time the title thereto is acquired. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 580.)

## § 29-408 [5: 238]. Excess holdings of lands to revert on failure of corporation to dispose of same.

On failure to so dispose of the land, so much of the same over and above the amount necessary to be used as provided in section 29-407 shall revert to the original donor, grantor, devisor, or their heirs. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 581.)

## § 29-409 [5: 239]. Officers.

Such corporation shall have the power to appoint a president or principal for the institution and such professors or servants as may be necessary, and to displace any of them, as the interests of the institution require; to fill vacancies which may happen by death, resignation, or otherwise among such officers or servants, and to prescribe and direct the course of studies to be pursued in the institution. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 582.)

## CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16-1601 et seq.

## § 29-410 [5: 240]. Treasurer—Bond required.

Such corporation may require the treasurer of the institution and all other agents thereof, before entering upon the duties of their appointment, to give bond for the security of the corporation in such sums and with such security as may be deemed sufficient by the corporation. (Mar. 3, 1901, 31 Stat. 1281, ch. 854, § 583.)

## § 29-411 [5: 241]. Annual statement—Content.

It shall be the duty of the trustees of any institution, or a majority of them, to file, on or before the first Monday in January in each year, in the office of the recorder of deeds, who shall index the same, a statement of the trustees and officers of the institution, with an inventory of its property and liabilities and students, and such other information as will exhibit its condition or operation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 584.)



### § 29-412 [5: 242]. Process against corporation.

All process against any such corporation shall be by summons, and the service of the same shall be by leaving an attested copy thereof with the president, secretary, or treasurer, or at the office of the corporation at least sixty days before the return day thereof. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 585.)

### § 29-413 [5: 243]. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the District Court of the United States for the District of Columbia, a writ of quo warranto shall issue, and the district attorney of the United States shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586.)

#### CROSS REFERENCE

Quo warranto proceedings generally, § 16-1601 et seq.

### § 29-414 [5: 244]. Incorporation fee.

The fee payable to the recorder of deeds for filing the certificate of incorporation under this chapter shall be \$25. (Mar. 3, 1901, ch. 854, § 586a, as added Mar. 2, 1929, 45 Stat. 1503, ch. 523.)

### § 29-415 [5: 245]. License to confer degrees—Issuance by Board of Education—Evidence required.

No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Board of Education of the District of Columbia, which before granting any such license may require satisfactory evidence—

1. That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning.

2. That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree: *Provided*, That if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred: *Provided further*, That no diploma shall be issued conferring a degree in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence.

3. That applicants for said degree possess the usual high-school qualifications at the time of their candidacy therefor.

4. That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the insti-

tution is possessed of suitable classroom, laboratory, and library equipment. (Mar. 3, 1901, ch. 854, § 586b, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

#### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Medical and dental colleges, § 31-901 et seq.

### § 29-416 [5: 246]. Application for license—Recordation—Use of public school personnel authorized.

Application for the license referred to in section 29-415 shall be in writing upon forms prepared under the direction of the Board of Education, and shall be filed with the secretary of the said board, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the recorder of deeds for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Board of Education is hereby authorized to employ the personnel of the public-school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under sections 29-414 to 29-419, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Board of Education as it may from time to time consider necessary or desirable for the better performance of its duties under sections 29-414 to 29-419. (Mar. 3, 1901, ch. 854, § 586c, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

### § 29-417 [5: 247]. Revocation of license—Hearing before Board of Education—Review by District Court.

A license once issued may be revoked by said Board of Education for noncompliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29-415. Upon the revocation of any such license it shall be the duty of the secretary of the Board of Education, in the case of an institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however*, That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Board of Education at either a public or nonpublic session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said board shall act in the revocation of such license shall be committed to writing under the direction of the board, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further*, That any party aggrieved by the action of



said board in refusing to license or in revoking a license previously granted may have the action of the said Board of Education reviewed by the District Court of the United States for the District of Columbia at an equity term thereof. (Mar. 3, 1901, ch. 854, § 586d, as added Mar. 2, 1929, 45 Stat. 1504, ch. 523.)

§ 29-418 [5:248]. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.

No institution incorporated under the provisions of this chapter shall use as its title, in whole or in part, the words United States, federal, American, national, or civil service, or any other words which might reasonably imply an official connection with the government of the United States, or any of its departments, bureaus, or agencies, or of the government of the District of Columbia, nor shall any such institutions advertise or claim the power to issue degrees under the authority of Congress or otherwise than under the authority of the license granted to them by the Board of Education as hereinbefore provided. The prohibition in this section contained shall be deemed to include and is hereby declared applicable to any individual or individuals, association, or incorporation outside of the District of Columbia which shall undertake to do business in the District of Columbia or to confer degrees or certificates therein, and any such individual or individuals, association, or incorporation violating the provisions of this section shall be subject to the penalty hereinafter in section 29-419: *Provided*, That no institution, incorporated prior to April 16, 1934, under the provisions of this chapter, and carrying on its work exclusively in any foreign country with the consent and approval of the government thereof, shall if otherwise entitled to be licensed by the Board of Education, be denied the same solely because of the inclusion in its name and as descriptive of its origin of any of the specific words the use of which is by this section forbidden to incorporations under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 586e, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523; Apr. 16, 1934, 48 Stat. 592, ch. 143.)

#### AMENDMENT

The act of April 16, 1934, 48 Stat. 592, ch. 143, amended this section by adding the proviso. That act purported to amend § 29-415.

§ 29-419 [5:249]. Penalties.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of sections 29-414 to 29-419, or who shall violate the provisions of section 29-418 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the District Court of the United States for the District of Columbia shall

be punished by a fine of not more than \$2,000, or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 586f, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523.)

### Chapter 5.—RELIGIOUS SOCIETIES

#### Sec.

- 29-501. Land to be acquired.
- 29-502. Trustees.
- 29-503. Certificate—Verification—Recording.
- 29-504. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.
- 29-505. Successors of trustees to file certificate.
- 29-506. Failure to elect trustees not to work dissolution.
- 29-507. Corporate powers.
- 29-508. Title vested in trustees or directors.
- 29-509. Conveyances of property—Powers of trustees or directors.
- 29-510. Mortgages.
- 29-511. Upon dissolution property to revert to donors.
- 29-512. Religious schools.
- 29-513. Conveyances to religious congregations—Not void for want of trustees.
- 29-514. Procedure for appointment of trustees to receive conveyances.
- 29-515. Suits by trustees.
- 29-516. Limitations on use of land.

§ 29-501 [5:311]. Land to be acquired.

It shall be lawful for the members of any society or congregation in the District, formed for the purpose of religious worship, to receive by gift, devise, or purchase a quantity of land not exceeding an acre, and to erect thereon such houses and buildings and to make such other use of the land and such other improvements thereon as may be deemed necessary for the purposes named, and for the comfort and convenience of the society or congregation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 587.)

#### NOTES TO DECISIONS

##### PURPOSE ABANDONED

When for practically 20 years, there has been nothing in the nature of a religious society or collective body doing or sustaining the work which it may have been the purpose of the donor to organize, a purely voluntary association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

##### SECULAR CORPORATION

Appropriation for Providence Hospital, a secular corporation created by act of Congress, is not unconstitutional as a law respecting the establishment of religion, regardless of the religious opinion of the members of the corporation. *Bradfield v. Roberts* (175 U. S. 291, 44 L. Ed. 168, 20 Sup. Ct. 121, affg. 12 App. D. C. 453).

§ 29-502 [5:312]. Trustees.

Such society or congregation may assume a name, and any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name so assumed, may be elected or appointed according to the rules or discipline governing the church or denomination to which said society or congregation may belong. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 588.)

#### COMPILER'S NOTE

The act of June 26, 1922, 42 Stat. 665, added the words "or directors," following the word "trustees" in the eight sections immediately following, but failed to add them



in this section, which says that they "shall" be styled trustees.

#### CROSS REFERENCES

Quo warranto proceedings to question right to corporate rights and franchises, § 16-1601 et seq.

Religious schools, § 29-512.

#### NOTES TO DECISIONS

##### SOCIETY DISBANDED

When for 17 years the society was disbanded and all its activities at an end, the property reverts to the original donor or his heirs. *Rose Campbell Mission v. Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

#### § 29-503 [5: 313]. Certificate—Verification—Recording.

The persons elected or appointed as trustees or directors shall immediately thereafter make a certificate under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and length of time for which they were elected or appointed, which shall be verified by the affidavit of one of the persons making the same, and shall be filed and recorded in the office of the recorder of deeds of the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 589; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

#### § 29-504 [5: 314]. Trustees or directors—Tenure of office—Vacancies—Rules and regulations—Removal.

The trustees or directors shall hold office during the period stated in their certificates, and vacancies in the office of trustee may be filled by election or appointment as above provided, and rules and regulations may be adopted in relation to the management of the estate and the duties of trustees or directors, or for their removal from office, in accordance with the rules or discipline governing the church or denomination to which such society or congregation may belong, not inconsistent with the Constitution of the United States and the laws in force in the District. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 590; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees" wherever it appears.

##### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16-1601 et seq.

#### § 29-505 [5: 315]. Successors of trustees to file certificate.

At the expiration of the term of service of any of the trustees or directors one or more successors may be elected or appointed, and a certificate of their appointment or election shall be made, verified, filed, and recorded as provided hereinbefore. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 591; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

#### § 29-506 [5: 316]. Failure to elect trustees not to work dissolution.

A failure to elect or appoint trustees or directors at the proper time shall not work a dissolution of

the society or congregation; but the trustees or directors last elected or appointed shall be considered as in office until another election or appointment shall take place. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 592; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees" wherever it appears.

#### § 29-507 [5: 317]. Corporate powers.

Such trustees or directors and their successors shall have perpetual succession and existence, and shall be capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 593; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

#### § 29-508 [5: 318]. Title vested in trustees or directors.

The title to land authorized to be purchased and to buildings and improvements thereon shall be vested in the trustees or directors by their assumed name and their successors forever, and the same shall be held for the uses and purposes named and no other. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 594; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

#### § 29-509 [5: 319]. Conveyances of property—Powers of trustees or directors.

The trustees or directors shall have power, under the direction of the society or congregation, or the authority by whom they were elected or appointed, to sell and execute deeds and conveyances of the property authorized to be held by the society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons; but no deed or conveyance shall be made so as to defeat or destroy the interest or effect of any grant, donation, or bequest and all grants, donations, and bequests shall be appropriated and used as directed by the person making the same. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 595; June 26, 1922, 42 Stat. 665, ch. 241.)

##### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

##### CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45-302.

#### § 29-510 [5: 320]. Mortgages.

The trustees or directors shall have power under the direction of the society or congregation, or the authority by whom they were elected or appointed, to execute mortgages, or deeds of trust in the nature of mortgages, upon the estate and property which any society or congregation are authorized to hold or to lease the same for a term not exceeding ten years; and such mortgages, deeds, and conveyances



shall have the same effect and be enforced by the same remedies and proceedings as like mortgages, deeds, leases, and conveyances made by natural persons. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 596; June 26, 1922, 42 Stat. 665, ch. 241.)

#### AMENDMENT

The act of 1922 inserted the words "or directors" after the word "trustees."

§ 29-511 [5: 321]. Upon dissolution property to revert to donors.

Upon the dissolution of any society or congregation the estate and property of such society or congregation shall revert back to the persons, their heirs, and assigns who may have given or contributed to the purchase of or payment for the same, according to their respective rights. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 597.)

#### NOTES TO DECISIONS

##### APPLICATION OF SECTION

Whether the dissolution is the result of an agreement on the part of the former members or is accomplished by abandonment and nonuser, the statute applies and in either case the property reverts. *Rose Campbell Mission v. Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

§ 29-512 [5: 322]. Religious schools.

The provisions of sections 29-501 to 29-511 are intended to extend to members of societies formed to establish and maintain private schools for religious purposes, but shall not be construed as conferring privileges or any benefits to such societies under the school laws of the District. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 598.)

§ 29-513 [5: 323]. Conveyances to religious congregations—Not void for want of trustees.

Where any conveyance or devise of real estate is made for the use and benefit of any religious congregation as a place of public worship, such conveyance or devise shall not be void or frustrated by reason of the want of trustees to take and hold the same in trust, but trustees may be appointed as provided in section 29-514. (R. S., D. C., § 453.)

§ 29-514 [5: 324]. Procedure for appointment of trustees to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the District Court of the United States for the District of Columbia shall, on application of the United States attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District, or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R. S., D. C., § 454.)

#### CROSS REFERENCE

Other provisions concerning rights and duties of surviving trustees, § 18-606.

§ 29-515 [5: 325]. Suits by trustees.

A majority of the acting trustees for any such congregation may sue and be sued in their own names,

in relation to the title, possession, or enjoyment of such property, without abatement by the death of any of the trustees, or substitution of others; and the action or suit may be prosecuted to its final termination in the names of the trustees by or against whom the same was instituted, and all other proceedings had in relation thereto, in like manner as if such death or substitution had not occurred. (R. S., D. C., § 455.)

§ 29-516 [5: 326]. Limitations on use of land.

Land authorized to be conveyed and held subsequent to June 17, 1844, and prior to May 5, 1870, for the uses of any religious congregation, in quantity not exceeding fifty acres, if in the District outside of the cities of Washington and Georgetown, nor exceeding three acres, if in either of said cities, shall not be held by the trustees of such congregation for any other use than as a place of public worship, religious or other instruction, burial-ground, or residence of their minister. (R. S., D. C., § 456.)

## Chapter 6.—CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS

### Sec.

29-601. Formation—Certificate—Contents.

29-602. Formation—Signers incorporated—Powers—Taxation of property.

29-603. Trustees—Quorum.

29-604. Reincorporation—Extension of time of corporate existence—Change of name.

29-605. Property—Power to lease, mortgage, sell—Proceeds.

29-606. Name of corporation.

§ 29-601 [5: 121]. Formation—Certificate—Contents.

Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence. (Mar. 3, 1901, 31 Stat. 1283, ch. 854, § 599.)

#### CROSS REFERENCES

Columbia Institution for the Deaf, § 31-1001 et seq.  
Eleemosynary, curative, correctional, and penal institutions, see title 32.

Medical and dental colleges, § 31-901 et seq.

Religious schools, § 29-512.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAWS

When a Federal right, as the right to incorporate a fraternal organization under act May 5, 1870 (16 Stat. 98, ch. 80), was held by a State court to have been lost by



subsequent conduct, that of itself involves no Federal question, and the Supreme Court may not examine the decision unless the State court in substance is denying the right. *Creswill v. Grand Lodge K. of P.* (225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. 822).

Where a lodge or fraternal organization was organized in Georgia in 1864, and incorporated under the act of May 5, 1870 (16 Stat. 98, ch. 80), complying with the statute in all respects, membership in which was limited to white males, it was estopped by laches from contesting the incorporation in the District of Columbia of an organization similar in name, organized by Negroes in Mississippi in 1880, in Georgia in 1886, and application made in the District of Columbia in 1889. *Creswill v. Grand Lodge K. of P.* (225 U. S. 246, 56 L. Ed. 1074, 32 Sup. Ct. 822).

White fraternal order incorporated under State law was not entitled to injunction against Negro order, organized under this act, in view of laches and acquiescence. *Ancient Egyptian Arabic Order v. Michaux* (279 U. S. 737, 73 L. Ed. 931, 49 Sup. Ct. 485, revg. (Tex. Com. App.), 286 S. W. 176).

The South Carolina subordinate lodge of a grand lodge organized under act of Congress of May 1870 (16 Stat. 98, ch. 80), in the District of Columbia could not be held to account for a judgment against the Georgia division of the same lodge. *Washington v. King* (159 S. Car. 431, 157 S. E. 613).

#### ABANDONMENT OF PURPOSE

A purely voluntary religious association, unincorporated and unorganized, cannot be said to have an existence after definitely abandoning the purpose of its creation and ceasing to exercise its functions. *Rose Campbell Mission v. Richardson* (64 App. D. C. 21, 73 Fed. (2d) 661).

#### DE FACTO CORPORATIONS

To establish a corporation as de facto is all that is necessary to enable it to maintain an action against any one, other than the State, who has contracted with the corporation, or done it a wrong. *Baltimore & P. R. Co. v. Fifth Baptist Church* (137 U. S. 568, 34 L. Ed. 784, 11 Sup. Ct. 185).

#### HEALTH ASSOCIATION

Group health association is a "relief association, not conducted for profit." *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

Group health is in fact and in function a consumer cooperative. The functions of such an organization are not identical with those of insurance or indemnity companies. The latter are concerned primarily, if not exclusively, with risk and the consequences of its descent. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

A group of individuals might incorporate themselves for their own mutual benefit and such corporation, not for profit but for the mutual benefit of its members, is not engaged in practice of medicine when they contracted with members of medical profession. *Group Health Assn. v. Moor* ((D. C.—D. C.), 24 Fed. Supp. 445).

#### HOSPITAL

Even if it be a fact that the appellee is incorporated as a charitable corporation and even if judicial notice could be taken that it is so incorporated, this would not conclude the question whether or not it is a charity. *White v. Central Dispensary & Emergency Hosp.* (69 App. D. C. 122, 99 Fed. (2d) 355, 119 A. L. R. 1002).

#### OBJECT OF ORGANIZATION

Object for which a corporation is organized is to be determined from what is stated in its certificate of incorporation and its constitution and bylaws. *Vanderbilt v. Com. Int. Rev.* ((C. C. A. 1), 93 Fed. (2d) 360).

#### POWER TO CONFER DEGREES

Claiming the right to confer degrees a right in the articles of incorporation does not confer such power. "It might have taken less than the section gave but not more." *National Assn. of Certified Public Accountants v. United States* (53 App. D. C. 391, 292 Fed. 668).

Corporation organized under this section has no power to confer degrees. *National Assn. of Certified Public Ac-*

*countants v. United States* (53 App. D. C. 391, 292 Fed. 668).

#### PROOF OF CORPORATE EXISTENCE

To prove the existence of a corporation under act May 5, 1870, ch. 80, § 2 (16 Stat. 99), a recorder's copy of the certificate of incorporation, acknowledgment, and affidavit was sufficient, together with a record of an action in which the corporation recovered judgment against the defendant in the instant case, without objection of capacity to sue. *Baltimore & P. R. Co. v. Fifth Baptist Church* (137 U. S. 568, 34 L. Ed. 784, 11 Sup. Ct. 185).

#### § 29-602 [5:122]. Formation—Signers incorporated—Powers—Taxation of property.

Upon filing their certificates the persons who shall have signed and acknowledged the same and their associates and successors shall be a body politic and corporate, by the name stated in such certificate; and by that name they and their successors may have and use a common seal, and may alter and change the same at pleasure, and may make by-laws and elect officers and agents, and may take, receive, hold, and convey real and personal estate necessary for the purposes of the society as stated in their certificate, and other real and personal property the income from which shall be applied to the purposes of such society: *Provided, however,* That this section shall not be construed to exempt any property from taxation in addition to that specifically exempted by law. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 600; Apr. 20, 1932, 47 Stat. 87, ch. 121.)

#### AMENDMENT

The act of 1932 amended this section by striking out the words "clear annual income from which shall not exceed in value \$25,000," and inserting in lieu thereof the following: "income from which shall be applied to the purposes of such society."

#### CROSS REFERENCES

Abandonment or readjustment of streets and highways to provide lands, § 7-113.

Conveyances of real estate, formal requisites, § 45-302.

Quo warranto proceedings questioning rights to corporate rights and franchises, § 16-1601 et seq.

#### NOTES TO DECISIONS

##### GROUP HEALTH ASSOCIATION

Appellee Group Health Association, organized as non-profit corporation, was not an insurance company. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

#### § 29-603 [5:123]. Trustees—Quorum.

Such incorporated society may elect its trustees, directors, or managers at such time and place and in such manner as may be specified in its by-laws, who shall have the control and management of the affairs and funds of the society, and a majority of whom shall be a quorum for the transaction of business, and whenever any vacancy shall happen in such board of trustees, directors, or managers the vacancies shall be filled in such manner as shall be provided by the by-laws of the society: *Provided,* That any society formed only for religious or missionary purposes may provide in its by-laws for a less number than a majority of its trustees to constitute a quorum. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 601; June 10, 1930, 46 Stat. 538, ch. 439.)

#### AMENDMENT

The act of 1930 amended this section by adding the proviso.

#### CROSS REFERENCE

Quo warranto proceedings questioning right to corporate office, § 16-1601 et seq.



§ 29-604 [5: 124]. Reincorporation—Extension of time of corporate existence—Change of name.

Any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation incorporated under the provisions of this chapter, including societies formed for mutual improvement, may reincorporate or may continue the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of continuance of corporate existence, or may change its name by the written consent of two-thirds of its trustees or directors or other governing board, which consent in the case of a stock corporation shall be accompanied by the written consent of the owners of two-thirds of the capital stock of the corporation. A certificate that such consent or consents have been duly given, containing the original name and the new name of the corporation, if the same has been changed, and the term of corporate existence as continued shall be subscribed and acknowledged by the president or vice-president and by the secretary or assistant secretary of such corporation, and shall be filed with such consent or consents in the office of the recorder of deeds, to be recorded by him. Upon the filing of such certificate all the rights, powers, property, and effects of such existing corporation subject to existing liabilities shall vest in and belong to the corporation so reincorporated, continued, or renamed. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 602; Mar. 3, 1905, 33 Stat. 1012, ch. 1445.)

#### AMENDMENT

Act of 1901 read as follows: "The trustees, directors, or stockholders of any existing benevolent, charitable, educational, musical, literary, scientific, religious, or missionary corporation, including societies formed for mutual improvement, may, by conforming to the requirements herein, reincorporate themselves, or continue their existing corporate powers under this subchapter, or may change their name, stating in their certificate the original name of such corporation as well as their new name assumed; and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued."

#### NOTES TO DECISIONS

##### CONSOLIDATION WITH ANOTHER ORGANIZATION

Bill praying for appointment of receiver for church corporation was dismissed for lack of equity where the acts complained of, such as the sale of the church property, consolidation with another organization, and change of name, were done by the duly elected trustees of the corporation. *Schooley v. Dimmick* (56 App. D. C. 350, 13 Fed. (2d) 956).

§ 29-605 [5: 125]. Property—Power to lease, mortgage, sell—Proceeds.

Any property of the corporation may be leased, encumbered by mortgage or deed of trust in the nature of a mortgage, or sold and conveyed absolutely, when authorized by a vote of the majority of the shares of stock, if the same be a stock corporation, or by a vote of the majority of the directors, managers, or trustees, if the same be not a stock corporation, at a meeting called for the purpose, the proceedings of which meeting shall be duly entered in the records of the corporation, and the proceeds arising therefrom shall be applied or invested for the

use and benefit of such corporation. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 603.)

#### CROSS REFERENCE

Conveyances of real estate, formal requisites, § 45-302.

§ 29-606 [5: 126]. Name of corporation.

The provisions of this chapter shall not extend or apply to any corporation, association, or individual who shall in the certificate filed with the recorder of deeds use or specify a name or style the same as that of any other incorporated body in the District. (Mar. 3, 1901, 31 Stat. 1284, ch. 854, § 604; June 30, 1902, 32 Stat. 533, ch. 1329.)

#### AMENDMENT

The act of 1902 struck out the syllable "sub" before chapter, and inserted after the word "any," the word "corporation."

### Chapter 7.—DISSOLUTION

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| <p>Sec.<br/>29-701.<br/>29-702.<br/>29-703.<br/>29-704.<br/>29-705.<br/>29-706.<br/>29-707.<br/>29-708.<br/>29-709.<br/>29-710.<br/>29-711.<br/>29-712.<br/>29-713.<br/>29-714.<br/>29-715.<br/>29-716.<br/>29-717.<br/>29-718.<br/>29-719.<br/>29-720.<br/>29-721.<br/>29-722.<br/>29-723.<br/>29-724.<br/>29-725.<br/>29-726.<br/>29-727.<br/>29-728.<br/>29-729.</p> | <p>Dissolution—Voluntary—Application to District Court.<br/>Contents of application.<br/>Order to appear—Notice.<br/>Reference to take testimony.<br/>Decree of dissolution.<br/>Receiver—Bond required.<br/>Receiver to be vested with corporate property.<br/>Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.<br/>Transactions and judgments confessed after petition filed—Void.<br/>Receiver—Arbitration of controversies—Executive contracts—Insurance.<br/>Surplus assets—Distribution to creditors.<br/>Surplus assets—Dividends to stockholders.<br/>Receiver—Under court's direction—Compensation.<br/>Dissolution before capital stock paid in or investments made.<br/>Trustees for creditors and stockholders.<br/>Actions not to abate—Judgments.<br/>Proceedings in corporate name for use of others.<br/>Suits after dissolution—Process.<br/>Involuntary dissolution—Suit of the United States—Petition—Order to show cause.<br/>Answer of corporation—Verification.<br/>Pleading.<br/>Trial—Decree of forfeiture—Appointment of receiver.<br/>Ex parte proceeding after default in pleading.<br/>Final decree—Power to withhold pending remedy of grievance.<br/>Injunction against assuming corporate franchise or transacting business not authorized by charter.<br/>Involuntary dissolution at the suit of creditors.<br/>Injunction against transferring assets—Receiver.<br/>Parties defendant in creditor's suit.<br/>Account and distribution.</p> |
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§ 29-701 [5: 391]. Dissolution—Voluntary—Application to District Court.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such



directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the District Court of the United States for the District of Columbia by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768.)

## CROSS REFERENCES

Dissolution by sale of all assets, § 29-240.  
Involuntary dissolution, § 29-719 et seq.

## NOTES TO DECISIONS

## CESSATION OF BUSINESS

"A corporation does not cease to exist through the discontinuance of its business, merely, though ceasing to maintain its active organization, or by becoming hopelessly insolvent." *Fields v. United States* (27 App. D. C. 433, dism. 205 U. S. 292, 51 L. Ed. 807, 27 Sup. Ct. 543), citing *Brown v. Delafield & Baxter Cement Co.* (1 App. D. C. 232).

## § 29-702 [5:392]. Contents of application.

Such application shall contain a statement of the reasons upon which it is founded, and there shall be annexed thereto—

First. A full, just, and true inventory of all the estate, real and personal, of the corporation, and of all the books, vouchers, and securities relating thereto.

Second. A full, just, and true account of the capital stock of the corporation, specifying the names of the stockholders, their residences, when known, the number of shares belonging to each, the amounts paid in upon said shares, respectively, and the amounts still due thereon.

Third. A statement of all the incumbrances on the property of the corporation and of all the engagements entered into by it which have not been fully satisfied or canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, the sum owing to each creditor and the nature and consideration of the indebtedness, and such application shall be verified by affidavit. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 769.)

## NOTES TO DECISIONS

## VOLUNTARY LIQUIDATION

A voluntary liquidation and dissolution of a solvent company together with appointment of receivers and reference to the auditor as provided by law was not ultra vires, illegal or void. *Tryson v. Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

## § 29-703 [5:393]. Order to appear—Notice.

On the filing of such application, accounts, inventories, and affidavit, an order shall be passed requiring all persons interested in said corporation to appear in said court and show cause by a day named, if any they have, why it should not be dissolved, and a notice of said order shall be published in some newspaper of general circulation weekly for three successive weeks, the first insertion to be not less than one month before the day fixed for showing cause as aforesaid. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 770.)

## § 29-704 [5:394]. Reference to take testimony.

Whether answer be made or not, the cause shall be referred to the auditor, who shall take testimony in relation to the allegations of the petition, and report to the court, with all convenient speed, with a statement of the property and effects, debts, credits, and engagements of the corporation and all other matters relative to the issues in said cause. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 771.)

## § 29-705 [5:395]. Decree of dissolution.

If it appear to the court that the corporation is insolvent, or that a dissolution thereof would be beneficial to the stockholders and not injurious to the public interests, or that the objects of the corporation have wholly failed or been abandoned or are impracticable, a decree shall be entered dissolving the corporation and appointing one or more receivers of its estate and effects; and the corporation shall thereupon be dissolved and cease to exist. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 772.)

## § 29-706 [5:396]. Receiver—Bond required.

A director, trustee, or other officer of the corporation, or any of its stockholders, may be appointed a receiver, and any receiver so appointed shall give bond in such penalty, and with such surety or sureties, as may be approved by the court, conditioned for the due discharge of his duties as receiver. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 773.)

## § 29-707 [5:397]. Receiver to be vested with corporate property.

Upon his giving surety as aforesaid the receiver shall be vested with all the estate, real or personal, of the corporation, for the benefit of its creditors and stockholders. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 774.)

## NOTES TO DECISIONS

## STOCKHOLDERS UNITE WITH RECEIVER

As insurance company was solvent, and no stockholder, as far as the record shows, personally united with the receivers in their attack upon the sale, the court refused to set it aside. *Tryson v. Southern Realty Corp.* (51 App. D. C. 55, 274 Fed. 135).

## § 29-708 [5:398]. Receiver to collect assets—Notice of appointment of receiver—Presentation of claims.

The said receiver shall proceed to collect and take into his possession all the assets and effects of the corporation, including any sums due and unpaid upon the subscriptions to the capital stock of the corporation, and shall have authority to institute all needful actions for that object. He shall give public notice of his appointment and require all creditors of the corporation to present their claims to him. (Mar. 3, 1901, 31 Stat. 1317, ch. 854, § 775.)

## § 29-709 [5:399]. Transactions and judgments confessed after petition filed—Void.

All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, of said corporation, including choses in action of every description, made after the filing of the petition for dissolution, in payment of or as security for any existing or prior debt, or for any other consideration, and all judgments confessed by said corpora-



tion after that time, shall be void as against the receiver appointed on said petition and as against the creditors of the corporation. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 776.)

**§ 29-710 [5: 400]. Receiver—Arbitration of controversies—Executory contracts—Insurance.**

The receiver may settle controversies that arise between him and the debtors or creditors of the corporation by arbitration. If there be any open and subsisting engagements or contracts of the corporation in the nature of insurance, or contingent engagements of any kind, the receiver may, with the consent of the party holding such engagements, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to the corporation, or so much thereof as shall be in the same proportion to the time which remains of any risk assumed by such engagements as the whole premium bears to the whole term of such risk; and upon such amount being paid by the receiver to the person holding such engagement it shall be deemed canceled and discharged as against the receiver. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 777.)

**§ 29-711 [5: 401]. Surplus assets—Distribution to creditors.**

The receiver may retain out of the money in his hands the amounts necessary for the purpose of canceling and discharging any open and subsisting engagements and of satisfying any demands for which a suit may be pending against the corporation and the costs of the proceeding, and distribute the residue among the creditors of the corporation, giving preference to debts which are liens on the property of the corporation, and shall make dividends from time to time among the creditors until their debts are paid in full. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 778.)

**§ 29-712 [5: 402]. Surplus assets—Dividends to stockholders.**

No dividends shall be paid to stockholders until after the final dividend to the creditors, and if, after such final dividend is made, there remain any surplus in the receiver's hands, he shall distribute the same among the stockholders in proportion to the respective amounts paid in by them severally on their shares of stock. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 779.)

**§ 29-713 [5: 403]. Receiver—Under court's direction—Compensation.**

The receiver shall be subject to the direction of the court as to making dividends and rendering his accounts and shall receive such commission as the court shall allow, not exceeding the rate allowed to executors and administrators, and reasonable counsel fees for services rendered to him. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 780.)

**§ 29-714 [5: 404]. Dissolution before capital stock paid in or investments made.**

When a majority of the directors, trustees, or other officers of a corporation become satisfied that the objects of the corporation can not be accomplished,

and no instalment of the capital stock has been paid, and no investments have been made and no debts incurred which are unpaid, they may call a meeting of the stockholders, by a notice published in some newspaper of general circulation, and if a majority, in amount, of the stockholders present at such meeting, in person or by proxy, shall decide that the objects of the corporation can not be accomplished, the corporation shall thereupon be dissolved and cease. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 781.)

**§ 29-715 [5: 405]. Trustees for creditors and stockholders.**

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the District Court of the United States for the District of Columbia, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782.)

**§ 29-716 [5: 406]. Actions not to abate—Judgments.**

No action pending in favor of or against any corporation shall be discontinued or abate by the dissolution of the corporation, whether such dissolution occur by the expiration of its charter or otherwise, but all such actions may be prosecuted to final judgment in its corporate name; and on all judgments so obtained, whether before or after its dissolution, execution may be had and satisfaction enforced in such corporate name. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 783.)

**CROSS REFERENCE**

Abatement and revivor in general, § 12-101 et seq.

**§ 29-717 [5: 407]. Proceedings in corporate name for use of others.**

A corporation may, after its dissolution, prosecute any action in and by its corporate name, for the use of the person or persons entitled to receive the proceeds of such action, upon any cause of action accrued, or which, but for such dissolution, would have accrued in favor of the corporation, in the same manner and with the like effect as if it had not been dissolved. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 784.)

**§ 29-718 [5: 408]. Suits after dissolution—Process.**

Any such dissolved corporation may be sued by its corporate name for or upon any cause of action accrued or which, but for such dissolution, would have accrued against it in the same manner and with the like effect as if it were not dissolved; and process in such action may be served upon any one of the assignees, trustees, or receivers having the manage-



ment of the assets of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 785.)

#### CROSS REFERENCE

Abatement and revivor in general, § 12-101 et seq.

#### NOTES TO DECISIONS

##### SERVICE OF SUMMONS

Question is whether summons was served upon an officer, agent, or employee of the corporation. This may be raised by a motion to quash the service of summons in the case. *Bloedorn v. Washington Times Co.* (67 App. D. C. 91, 89 Fed. (2d) 835).

##### SUIT IN CORPORATE NAME

Action was properly brought against company in its corporate name even though it had been lawfully dissolved. *Lyman v. Knickerbocker Theatre Co.* (55 App. D. C. 323, 5 Fed. (2d) 538).

§ 29-719 [5: 409]. Involuntary dissolution—Suit of the United States—Petition—Order to show cause.

Whenever the district attorney of the United States for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said district attorney shall file in the District Court of the United States for the District of Columbia a petition in the name of the United States, setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786.)

#### CROSS REFERENCES

Dissolution upon second conviction of operating a bucket-shop, § 22-1510.

Voluntary dissolution, §§ 29-701 to 29-718.

#### NOTES TO DECISIONS

##### FAILURE TO PAY LICENSE TAX

"A charter of incorporation is not ipso facto abrogated or annulled by failure to pay a license tax, notwithstanding that the statute may provide that such failure shall work a forfeiture." *Ohio Bank v. Central Constr. Co.* (17 App. D. C. 524).

§ 29-720 [5: 410]. Answer of corporation—Verification.

The said corporation, by the day named in said order, unless further time be granted by the court, shall file an answer to said petition, fully setting forth all the defenses upon which it intends to rely in resisting the application, which shall be verified by affidavit of some officer of the corporation. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 787.)

§ 29-721 [5: 411]. Pleading.

The petitioners may thereupon plead to or traverse all or any of the material averments set forth in the answer, and the defendant shall join issue with or demur to said plea or traverse within five days thereafter. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 788.)

§ 29-722 [5: 412]. Trial—Decree of forfeiture—Appointment of receiver.

If issue or issues be joined on such proceedings, the same shall stand for trial at such time as the court shall direct and shall be tried by a jury if either party desire it; otherwise, they shall be heard and determined by the court. If, from the findings of the jury or upon consideration and determination of the case by the court, the court shall be of opinion that legal cause of forfeiture has been shown and the public interests require that said forfeiture shall be declared, a decree of forfeiture shall be entered and the charter of said corporation shall thereby be annulled and vacated and its corporate franchises and powers shall cease and be void; and the court shall thereupon appoint a receiver or receivers of the assets and estate of said corporation, who shall proceed to wind up the affairs of said corporation, for the benefit of its creditors and stockholders, under the direction of the court. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 789.)

§ 29-723 [5: 413]. Ex parte proceeding after default in pleading.

If any corporation upon which a petition and rule to show cause shall have been served as aforesaid, shall neglect to file an answer thereto at the time appointed by the court, the court shall proceed to hear the application ex parte within five days thereafter, and if it shall be of opinion that good cause of forfeiture is shown it shall proceed to decree as provided in section 29-722. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 790.)

§ 29-724 [5: 414]. Final decree—Power to withhold pending remedy of grievance.

If the court, either upon a hearing ex parte or after answer, shall be of opinion that no cause of forfeiture is shown or that the public interests do not demand that such forfeiture be decreed, though legal cause therefor has been shown, it shall dismiss the petition. And if the court shall determine that legal cause of forfeiture has been shown, it may, in its discretion, before passing a final decree of forfeiture, pass orders requiring the said corporation, within a time to be therein fixed, to remedy the grievance complained of, and may suspend the passage of the final decree of forfeiture until the time so fixed, and may afterwards refuse to pass such decree if the grievance shall have been remedied by the time so fixed. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 791.)

§ 29-725 [5: 415]. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The district attorney may file a bill in the name of the United States in said District Court of the United States for the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Co-



lumbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said District Court of the United States for the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793; June 30, 1902, 32 Stat. 534, ch. 1329.)

#### COMPILER'S NOTE

The words "this code" refer to the 1901 code, i. e., the act of Mar. 3, 1901, as shown in the history lines of the various sections of this compilation.

#### AMENDMENT

The act of 1902 inserted after the word "corporation" the second time it appears the words "and said district attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations."

#### CROSS REFERENCES

Quo warranto proceedings questioning rights to corporate rights as franchises, § 16-1601 et seq.

Restraint on doing business upon second conviction of operating a bucket-shop, § 22-1510.

#### NOTES TO DECISIONS

##### UNAUTHORIZED DEGREES

This section declares that the district attorney may file a bill in the name of the United States in the Supreme Court of the District and it applies to corporations giving degrees when not authorized. *National Assn. of C. P. A. v. United States* (53 App. D. C. 391, 292 Fed. 668).

§ 29-726 [5: 416]. Involuntary dissolution at the suit of creditors.

When any corporation in the District has remained insolvent for a year, or has neglected or refused for that period to pay and discharge its notes or other evidences of debt, or has, for that period, suspended its ordinary and lawful business, a bill may be filed by the district attorney, as aforesaid, for the dissolution of said corporation, or, if he shall decline to do so, on the application of any judgment creditor of said corporation, the said judgment creditor, if an execution upon his judgment shall be returned unsatisfied, in whole or in part, may file such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 794.)

#### NOTES TO DECISIONS

##### SUFFICIENCY OF BILL

A bill for a receivership of an insurance company, asking for a dissolution, may be sufficient to invoke the court's general equity jurisdiction, though not for a statutory dissolution. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

§ 29-727 [5: 417]. Injunction against transferring assets—Receiver.

Upon prima facie proof of the facts necessary to sustain such suit the court may issue an injunction restraining the corporation, its trustees, directors, and officers from collecting or receiving any debt

or demand and from paying out or transferring or delivering to any person any of its property or effects and from exercising any of its corporate rights and franchises during the pendency of the suit, unless by permission of the court. And at any stage of the proceeding the court may appoint a receiver to collect and preserve the property of the corporation and dispose of and manage the same, under the direction of the court, until final decree in the cause. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 795.)

#### NOTES TO DECISIONS

##### COLLATERAL ATTACK

Where a receiver for a life insurance company had been appointed, and a representative of policyholders subsequently instituted a second proceeding for a dissolution, and asking another receiver, on the ground that the court had exceeded its jurisdiction in appointing the first receiver, the second proceeding was an arbitrary exercise of discretion, as the assets had been liquidated, and only distribution remained to be made, and an unwarranted collateral attack. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

##### DISCRETION OF COURT IN APPOINTING RECEIVER

The provision for the appointment of a receiver in dissolution proceedings is not mandatory, and the appointment is at the court's discretion. *National Ben. Life Ins. Co. v. Shaw-Walker Co.* (71 App. D. C. 276, 111 Fed. (2d) 497).

§ 29-728 [5: 418]. Parties defendant in creditor's suit.

Where the action is brought by a creditor, the stockholders, directors, trustees, or other officers, or any of them who may be made liable by law for the payment of the complainant's debt, may be made parties defendant by the original or a supplemental bill, and their liability may be declared and enforced by the decree; but nothing herein shall prevent any creditor from enforcing such liability in a separate suit against such parties. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 796.)

§ 29-729 [5: 419]. Account and distribution.

In such suit, if the court shall be of opinion that the complainant is entitled to the relief prayed, and that such corporation ought to be dissolved, the court shall cause an account to be taken of the assets and debts of the corporation and shall decree an equal distribution of the assets among the creditors, subject to existing liens; but if said corporation has no property to satisfy its creditors, or to the extent to which its property is insufficient therefor, the court may require the stockholders, who are parties defendant to the suit, to pay into court the amounts due and unpaid on the shares of stock held by them, and shall ascertain the amounts properly chargeable, in favor of creditors, to said stockholders and the trustees, directors, or other officers who are parties to the suit, and in the final decree for the dissolution shall adjudge and decree that said amounts shall be paid into court by the parties respectively liable therefor, to be applied to the payment of the debts of the corporation. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 797.)



## Chapter 8.—COOPERATIVE ASSOCIATIONS

Sec.

- 29-801. Definitions.
- 29-802. Who may incorporate.
- 29-803. Purposes for which incorporated.
- 29-804. Powers of association.
- 29-805. Articles of incorporation—Contents.
- 29-806. Filing and recordation of articles—Fees—Effect of certificate.
- 29-807. Amendments of articles—Fee.
- 29-808. Bylaws—Adoption, amendment, or repeal.
- 29-809. Contents of bylaws.
- 29-810. Meetings—Regular and special.
- 29-811. Notice of meetings.
- 29-812. Meetings by units of the membership.
- 29-813. Voting—One member, one vote.
- 29-814. Proxy voting prohibited.
- 29-815. Voting by mail.
- 29-816. Application of voting provisions to voting by mail.
- 29-817. Application of voting provisions to voting by delegates.
- 29-818. Directors.
- 29-819. Officers.
- 29-820. Removal of directors and officers.
- 29-821. Referendum on acts of directors.
- 29-822. Shares and membership—Limitations upon the return on capital.
- 29-823. Eligibility and admission to membership.
- 29-824. Subscribers.
- 29-825. Share and membership certificates—Issuance and contents.
- 29-826. Transfer of shares and membership—Withdrawal.
- 29-827. Share and membership certificates—Recall.
- 29-828. Share and membership certificates—Attachment.
- 29-829. Liability of members.
- 29-830. Expulsion of members—Procedure—Purchase of holdings.
- 29-831. Allocation and distribution of net savings.
- 29-832. Bonding of officers and employees.
- 29-833. Books—Auditing.
- 29-834. Annual report of association.
- 29-835. Notice of delinquent reports—Mandamus.
- 29-836. Dissolution—Methods—Procedure.
- 29-837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.
- 29-838. Promotion expenses—Limitations—Penalty.
- 29-839. Spreading false reports—Penalty.
- 29-840. Existing cooperative groups—Acceptance of act.
- 29-841. Foreign corporations and associations—Admission to do business.
- 29-842. Legality declared—Not in restraint of trade.
- 29-843. Laws not applicable.
- 29-844. Taxation—Annual license fee.
- 29-845. Separability—Constitutionality.
- 29-846. Reservation of right to amend or repeal.
- 29-847. Short title.

## § 29-801. Definitions.

In this chapter unless the subject-matter requires otherwise—

(1) "Association" means a group enterprise legally incorporated under this chapter, and shall be deemed to be a nonprofit corporation.

(2) "Member" means not only a member in a nonshare association but also a member in a share association.

(3) "Net savings" means the total income of an association minus the costs of operation.

(4) "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with the provisions of section 29-831 herein.

(5) "Cooperative basis" as applied to any incorporated or unincorporated group referred to in sec-

tions 29-804 (7), 29-813, 29-823, 29-837, 29-840, and 29-841 herein means—

(a) that each member has one vote and only one vote, except as may be altered in the articles or by-laws by provision for voting by member organizations;

(b) that the maximum rate at which any return is paid on share or membership capital is limited to not more than 8 per centum per annum;

(c) that the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles, or by-laws, or allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise, for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character. (June 19, 1940, 54 Stat. —, ch. 397, § 1.)

## § 29-802. Who may incorporate.

Any five or more natural persons or two or more associations may incorporate in the District of Columbia under this chapter. (June 19, 1940, 54 Stat. —, ch. 397, § 2.)

## § 29-803. Purposes for which incorporated.

An association may be incorporated under this chapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type or types of property, commodities, goods, or services for the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers. (June 19, 1940, 54 Stat. —, ch. 397, § 3.)

## § 29-804. Powers of association.

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this chapter and also—

(1) To continue as a corporation for the time specified in its articles;

(2) To have a corporate seal and to alter the same at pleasure;

(3) To sue and be sued in its corporate name;

(4) To make by-laws for the government and regulation of its affairs;

(5) To acquire, own, hold, sell, lease, pledge, mortgage, or otherwise dispose of any property incident to its purposes and activities;

(6) To own and hold membership in and share capital of other associations and any other corporations, and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;

(7) To borrow money, contract debts, and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(8) To conduct its affairs within or without the District of Columbia;



(9) To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this chapter;

(10) To exercise all powers not inconsistent with this chapter which may be necessary, convenient, or expedient for the accomplishment of its purposes, and, to that end, the foregoing enumeration of powers shall not be deemed exclusive. (June 19, 1940, 54 Stat. —, ch. 397, § 4.)

#### § 29-805. Articles of incorporation—Contents.

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments.

Within the limitations of this chapter the articles shall contain—

(1) A statement as to the purpose or purposes for which the association is formed;

(2) The name of the association which shall include the word "cooperative";

(3) The term of existence of the association which may be perpetual;

(4) The location and address of the principal office of the association;

(5) The names and addresses of the incorporators of the association;

(6) The names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) A statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) If organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value thereof which may be placed at any figure, and the rights, preferences, and restrictions of each type of share;

(9) The minimum number or value of shares which must be owned in order to qualify for membership; if organized without shares, a statement of whether the property rights of members shall be equal or unequal, and if unequal, the rule by which their rights shall be determined;

(10) The maximum amount or percentage of capital which may be owned or controlled by any member; including a statement of whether or not each member shall be limited to a single share, and whether such single shares shall be of various par values;

(11) The method by which any surplus, upon dissolution of the association, shall be distributed, in conformity with the requirements of section 29-836 herein for division of such surplus.

The articles may also contain any other provisions not inconsistent with law or with this chapter, for the conduct of the association's affairs. (June 19, 1940, 54 Stat. —, ch. 397, § 5.)

#### § 29-806. Filing and recordation of articles—Fees—Effect of certificate.

The articles shall be delivered to the recorder of deeds. If he finds that the articles conform to law, he shall file the same upon the payment of a fee of

\$5, and he shall record the same, upon payment of a fee of \$1. Said fees shall be in lieu of any other fees or payments provided in section 45-708, or in any other section of the Code of Laws of the District of Columbia, to be paid for at the time of said filing; and the last paragraph of section 45-708 shall have no application to associations organized under this chapter. After such filing and recording, he shall issue a certificate of incorporation, whereupon the corporate existence shall begin. Such certificate shall be conclusive evidence of the fact that the corporation has been duly incorporated. This shall not preclude the institution of quo warranto proceedings under sections 16-601 to 16-611. The filing or recording of the articles or of amendments thereto, or of any other papers pursuant to this chapter is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person or incorporated or unincorporated group dealing with the association shall be charged with constructive notice of the contents of any such articles or papers by reason of such filing or recording. (June 19, 1940, 54 Stat. —, ch. 397, § 6.)

#### COMPILER'S NOTE

Reference to "Code of Laws of the District of Columbia" found in this section was to the Code of 1901.

#### § 29-807. Amendments of articles—Fee.

Amendments to the articles may be proposed by a two-thirds vote of the board of directors, or by petition of 10 per centum of the association's members. Notice of the meeting to consider such amendment shall be sent by the Secretary at least thirty days in advance thereof to each member at his last-known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt said amendment and when verified by the president and secretary, it shall be filed and recorded with the recorder of deeds within thirty days of its adoption, and a fee of \$1 shall be paid.

If the amendment is to alter the preferences of outstanding shares of any type, or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning such outstanding shares affected by the change shall also be required for the adoption of the amendment; if the amendment is to alter the rule by which members' property rights in a nonshare association are determined, a vote of two-thirds of the entire membership shall be required.

The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. (June 19, 1940, 54 Stat. —, ch. 397, § 7.)

#### § 29-808. Bylaws—Adoption, amendment, or repeal.

By-laws shall be adopted, amended, or repealed by at least a majority vote of the members voting. (June 19, 1940, 54 Stat. —, ch. 397, § 8.)



### § 29-809. Contents of bylaws.

The by-laws may, within the limitations of this chapter provide for—

(1) The method and terms of admission to membership and the disposal of members' interests on cessation of membership for any reason;

(2) The time, place, and manner of calling and conducting meetings;

(3) The number or percentage of the members constituting a quorum;

(4) The number, qualifications, powers, duties, term of office, and manner, time, and vote for election, of directors and officers; and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) The compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) The method of distributing the net savings;

(7) The various discretionary provisions of this chapter as well as other provisions incident to the purposes and activities of the association. (June 19, 1940, 54 Stat. —, ch. 397, § 9.)

### § 29-810. Meetings—Regular and special.

Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within thirty days after such demand. Regular or special meetings, including meetings by units as hereinafter provided, may be held within or without the District of Columbia as the articles may prescribe. (June 19, 1940, 54 Stat. —, ch. 397, § 10.)

### § 29-811. Notice of meetings.

The secretary shall give notice of the time and place of meetings by sending a notice thereof to each member at his last-known address not less than the number of days in advance of the meeting specified in the by-laws. In case of a special meeting, the notice shall specify the purpose for which such meeting is called. (June 19, 1940, 54 Stat. —, ch. 397, § 11.)

### § 29-812. Meetings by units of the membership.

The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes there cast to the central meeting, or for a method of representation by the election of delegates to the central meeting, or for a combination of both such methods. (June 19, 1940, 54 Stat. —, ch. 397, § 12.)

### § 29-813. Voting—One member, one vote.

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis the voting rights of such member associations or groups may be as prescribed in the articles or by-laws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable at law or in equity. (June 19, 1940, 54 Stat. —, ch. 397, § 13.)

### § 29-814. Proxy voting prohibited.

No member shall be permitted to vote by proxy. (June 19, 1940, 54 Stat. —, ch. 397, § 14.)

### § 29-815. Voting by mail.

The articles or by-laws may provide for either or both of the following types of voting by mail:

(1) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days;

(2) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

The articles or by-laws may also determine whether and to what extent mail votes shall be counted in computing a quorum. (June 19, 1940, 54 Stat. —, ch. 397, § 15.)

### § 29-816. Application of voting provisions to voting by mail.

If an association has provided for voting by mail, any provision of this chapter referring to votes cast by the members shall be construed to include the votes cast by mail. (June 19, 1940; 54 Stat. —, ch. 397, § 16.)

### § 29-817. Application of voting provisions to voting by delegates.

If an association has provided for voting by delegates any provision of this chapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail. (June 19, 1940, 54 Stat. —, ch. 397, § 17.)

### § 29-818. Directors.

An association shall be managed by a board of not less than five directors, who shall be elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association and shall hold office until their successors are elected, or until removed. Vacancies in the board of directors, otherwise than by removal or expiration of term, shall be filled in such manner as the by-laws may provide.

The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

An executive committee of the board of directors may be elected in such manner and with such powers and duties as the articles or by-laws may prescribe.

Meetings of directors and of the executive committee may be held within or without the District



of Columbia. (June 19, 1940, 54 Stat. —, ch. 397, § 18.)

#### § 29-819. Officers.

The officers of an association shall include a president, one or more vice-presidents, a secretary and a treasurer, or a secretary-treasurer. The officers shall be elected annually by the directors unless the by-laws otherwise provide. The president and at least one vice-president must be directors, but no other officer need be a director. (June 19, 1940, 54 Stat. —, ch. 397, § 19.)

#### § 29-820. Removal of directors and officers.

A director or officer may be removed with or without cause, by a vote of two-thirds of the members voting at a regular or special meeting. The director or officer involved shall have an opportunity to be heard at said meeting. A vacancy caused by any such removal shall be filled by the vote provided in the by-laws for election of directors. (June 19, 1940, 54 Stat. —, ch. 397, § 20.)

#### § 29-821. Referendum on acts of directors.

The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 per centum of all the members or by vote of at least a majority of the directors: *Provided, however,* That the rights of third parties which have vested between the time of such action and such referendum shall not be impaired thereby. (June 19, 1940, 54 Stat. —, ch. 397, § 21.)

#### § 29-822. Shares and membership—Limitations upon the return on capital.

The return upon capital shall not exceed 6 per centum per annum upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50 per centum of the net savings for that period. (June 19, 1940, 54 Stat. —, ch. 397, § 22.)

#### § 29-823. Eligibility and admission to membership.

Any natural person, association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group, shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or by-laws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. —, ch. 397, § 23.)

#### § 29-824. Subscribers.

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers. (June 19, 1940, 54 Stat. —, ch. 397, § 24.)

#### § 29-825. Share and membership certificates—Issuance and contents.

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections 29-813, 29-814, and 29-826 herein. (June 19, 1940, 54 Stat. —, ch. 397, § 25.)

#### § 29-826. Transfer of shares and membership—Withdrawal.

If a member desires to withdraw from the association or dispose of any or all of his holdings therein, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within sixty days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association. (June 19, 1940, 54 Stat. —, ch. 397, § 26.)

#### § 29-827. Share and membership certificates—Recall.

The by-laws may give the directors the power to use the reserve funds to recall, at par value, the holdings of any member in excess of the amount requisite for membership; and may also provide that if any member has failed to patronize the association during a period of time specified in the by-laws, the directors may use the reserve funds to recall all his holdings and thereupon he shall cease to be a member of the association. When so recalled, such certificates of share or membership capital shall be either reissued or canceled. (June 19, 1940, 54 Stat. —, ch. 397, § 27.)

#### § 29-828. Share and membership certificates—Attachment.

The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, shall be exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to such liability, the directors of the association may either admit the purchaser thereof to membership, or may purchase from him such holdings at par value. (June 19, 1940, 54 Stat. —, ch. 397, § 28.)

#### § 29-829. Liability of members.

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber



be so liable except to the extent of the unpaid amount on the shares or membership certificate subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid up. (June 19, 1940, 54 Stat. —, ch. 397, § 29.)

**§ 29-830. Expulsion of members—Procedure—Purchase of holdings.**

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least ten days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds. (June 19, 1940, 54 Stat. —, ch. 397, § 30.)

**§ 29-831. Allocation and distribution of net savings.**

At least once a year the members and/or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) Not less than 10 per centum shall be placed in a reserve fund until such time as the fund shall equal at least 50 per centum of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of section 29-836 herein;

(2) A return upon capital, within the limitations of section 29-822, may be paid upon share capital, or, if the by-laws so provide, upon the membership capital certificates of a nonshare association; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities (including in the latter the amount of the capital stock) after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

(3) A portion of the remainder, as determined by the articles or by-laws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(4) The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage: *Provided, That—*

(a) in the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the

purchase of an additional share or shares, or additional membership capital;

(b) in the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or by-laws provide, be distributed to him, or credited to his account until the amount of capital subscribed for has been fully paid;

(c) in the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings return so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership. When a sum equal to this amount has accumulated at any time within a period of time specified in the by-laws, such patron shall be deemed and become a member of the association if he so agrees or requests, and complies with any provisions in the by-laws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him.

(d) if within any periods of time specified in the articles or by-laws, (1) any subscriber has not accumulated and paid in the amount of capital subscribed for; or (2) any nonmember patron has not accumulated in his individual account the sum necessary for membership; or (3) any nonmember patron has accumulated the sum necessary for membership but neither requests nor agrees to become a member, or fails to comply with the provisions of the by-laws, if any, for admission to membership, then the amounts so accumulated or paid in and any part of the general fund for non-member patrons which has not been allocated to individual nonmember patrons shall go to the educational fund and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such: *Provided further, That* nothing in this section shall prevent an association under this chapter which is engaged in rendering services from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members: *And provided further, That* nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system, whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date, in the order of their serial number or date of issue. (June 19, 1940, 54 Stat. —, ch. 397, § 31.)

**§ 29-832. Bonding of officers and employees.**

Every individual acting as officer or employee of an association and handling funds or securities amounting to \$1,000 or more, in any one year, shall be covered by an adequate bond as determined by the board of directors, and at the expense of the association; and the by-laws may also provide for



the bonding of other employees or officers. (June 19, 1940, 54 Stat. —, ch. 397, § 32.)

#### § 29-833. Books—Auditing.

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director. Where the annual business amounts to less than \$10,000, the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with nonmembers, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. (June 19, 1940, 54 Stat. —, ch. 397, § 33.)

#### § 29-834. Annual report of association.

Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the recorder of deeds. The report shall state—

(a) The name and principal address of the association.

(b) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any.

(c) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For nonshare associations the annual report shall state the total number of members, the number admitted or withdrawn during the year, and the amount of membership fees received.

(d) The receipts, expenditures, assets, and liabilities of the association.

A copy of this report shall be kept on file at the principal office of the association.

Any person who shall subscribe or make oath to such report containing a materially false statement, known to such person to be false, shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, or by imprisonment of not less than thirty days nor more than one year, or both such fine and imprisonment. (June 19, 1940, 54 Stat. —, ch. 397, § 34.)

#### § 29-835. Notice of delinquent reports—Mandamus.

If an association fails to make such report within the required period of sixty days, the recorder of deeds shall within sixty days from the expiration of said period send such association a registered letter directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, any member of the association or the United States attorney for the District of Columbia may by petition for mandamus against the association and its proper officers compel such filing to be made, and in such case the court shall require the

association or the officers at fault to pay all the expenses of the proceeding including counsel fees. (June 19, 1940, 54 Stat. —, ch. 397, § 35.)

#### § 29-836. Dissolution—Methods—Procedure.

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. By a vote of a majority of the members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, and shall distribute them in the manner set forth in this section. A suit for involuntary dissolution of an association organized under this chapter may be instituted for the causes and prosecuted in the manner set forth in sections 29-719 to 29-724, 29-726 to 29-729: *Provided*, That any distribution of assets shall be in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order: (1) By paying its debts and expenses; (2) by returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions, and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and (3) by distributing any surplus in either or both of the following ways as the articles may provide—

(a) Among those patrons who have been members or subscribers at any time during the past six years, on the basis of their patronage during that period;

(b) As a gift to any consumers' cooperative association or other nonprofit enterprise which may be designated in the Articles. (June 19, 1940, 54 Stat. —, ch. 397, § 36.)

#### § 29-837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.

Only (1) associations organized under this chapter, (2) groups organized on a cooperative basis under any other law of the District of Columbia, and (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia shall be entitled to use the term "cooperative," or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis.

Any person, firm, or corporation violating the above provision shall upon conviction of such offense be punished by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. The district attorney of the United States for the District of Columbia, or any individual, or association, or group organized on a cooperative basis, may sue to enjoin an alleged violation of this section.

Should a court of competent jurisdiction decide that any person, firm, or corporation using the name



"cooperative" prior to this chapter, and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name the words "does not comply with the cooperative association law of the District of Columbia" in the same kind of type, and in letters not less than two-thirds as large, as those used in the term "cooperative." (June 19, 1940, 54 Stat. —, ch. 397, § 37.)

**§ 29-838. Promotion expenses—Limitations—Penalty.**

An association shall not, directly or indirectly, use any of its funds, nor issue shares nor incur any indebtedness, for the payment of any compensation for the organization of the association except necessary legal fees; nor for the payment of any promotion expenses in excess of 5 per centum of the amount paid in for the shares or membership certificates involved in the promotion transaction. Any association's officer, director, or agent who gives, or any person, firm, corporation or association which receives such promotion commission in violation of this section shall, upon conviction of such offense, be punished by a fine of not less than \$25, nor more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. —, ch. 397, § 38.)

**§ 29-839. Spreading false reports—Penalty.**

Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any association shall, upon conviction of such offense, be punished by a fine of not less than \$25 and not more than \$200, or by imprisonment for not less than thirty days nor more than one year, or by both such fine and imprisonment. (June 19, 1940, 54 Stat. —, ch. 397, § 39.)

**§ 29-840. Existing cooperative groups—Acceptance of act.**

Any group incorporated under another law of the District of Columbia and operating on a cooperative basis or any unincorporated group operating on such a basis in the District of Columbia may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this chapter, and shall thereupon amend such of its articles and by-laws as are not in conformity with this chapter. A certified copy of the amended articles shall be filed and recorded with the recorder of deeds and a fee of \$5 shall be paid. (June 19, 1940, 54 Stat. —, ch. 397, § 40.)

**§ 29-841. Foreign corporations and associations—Admission to do business.**

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state wherein it is organized shall be entitled to do business in the District of Columbia as a foreign cooperative corporation or association. (June 19, 1940, 54 Stat. —, ch. 397, § 41.)

**§ 29-842. Legality declared—Not in restraint of trade.**

No association, or method or act thereof which complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. (June 19, 1940, 54 Stat. —, ch. 397, § 42.)

**§ 29-843. Laws not applicable.**

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of sections 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. (June 19, 1940, 54 Stat. —, ch. 397, § 43.)

**COMPILER'S NOTES**

The above reference to the Code of Law for the District is to the 1901 Code, and covers the entire subject of corporations as printed in that Code, including Banks, Cemeteries, Insurance, and other specific purpose corporations.

The sections of the 1901 Code above referred to appear in this Code under the following section numbers:

26-101, 26-102, 26-301 to 26-336, 26-401 to 26-414 (Banking and Other Financial Institutions);

27-101 to 27-128 (Cemeteries and Crematories);

29-101 to 29-103, 29-201 to 29-237, 29-301 to 29-308, 29-401 to 29-419, 29-501 to 29-512, 29-601 to 29-606, 29-701 to 29-729 (Corporations);

35-101 to 35-108, 35-202 to 35-205, 35-901 to 35-917, 35-1001 to 35-1005, 35-1133, 35-1201, 35-1202 (Insurance);

44-101 to 44-103, 44-210 to 44-212 (Railroads and Other Carriers).

**§ 29-844. Taxation—Annual license fee.**

Associations formed hereunder, and foreign corporations and associations admitted under section 29-841 to do business in the District of Columbia and entitled to the benefits of section 29-837, shall pay an annual license fee of \$10. (June 19, 1940, 54 Stat. —, ch. 397, § 44.)

**§ 29-845. Separability—Constitutionality.**

If any provision of this chapter or the application thereof to any person or circumstance shall be held unconstitutional or otherwise invalid for any reason, the validity of the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby. (June 19, 1940, 54 Stat. —, ch. 397, § 45.)

**§ 29-846. Reservation of right to amend or repeal.**

The Congress reserves the right to alter, amend, or repeal this chapter, or any charter or certificate of incorporation made thereunder. (June 19, 1940, 54 Stat. —, ch. 397, § 46.)

**§ 29-847. Short title.**

This chapter may be cited as the "District of Columbia Cooperative Association Act." (June 19, 1940, 54 Stat. —, ch. 397, § 47.)







## TITLE 30.—DOMESTIC RELATIONS

Chap.	Sec.	
1. Marriage	30-101	
2. Property rights	30-201	

### Chapter 1.—MARRIAGE

Sec.	
30-101.	Prohibitions—Marriages void ab initio.
30-102.	Marriage may be decreed to be void.
30-103.	Marriages void from date of decree—Age of consent.
30-104.	Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.
30-105.	Marriage out of District of domiciled persons.
30-106.	Persons authorized to perform marriage ceremony.
30-107.	Marriage performed by unauthorized person—Penalty.
30-108.	Celebration of marriage without license—Penalty.
30-109.	Issuance of license.
30-110.	Duty of clerk before issuing license—Perjury.
30-111.	Consent of parent or guardian.
30-112.	Form of license—Return—Coupon.
30-113.	Failure to make return—Penalty.
30-114.	Record of clerk—Contents.
30-115.	Marriage records transferred from health department.
30-116.	Slave marriages.
30-117.	Issue of marriage of colored persons—Legitimacy—Property rights.

#### § 30-101 [14: 1]. Prohibitions—Marriages void ab initio.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First. The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second. The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce. (Mar. 3, 1901, 31 Stat. 1391, ch. 354, § 1283.)

#### CROSS REFERENCES

Proceedings to annul a marriage, §§ 16-402, 16-407 to 16-411.

Divorce and separation, § 16-401 et seq.

### NOTES TO DECISIONS

#### COMMON-LAW MARRIAGE

Proof of common-law marriage was not sufficient to sustain a contract in consideration of marriage. *Evans v. Neumann* (51 App. D. C. 300, 278 Fed. 1013).

Common-law marriage not invalid. Surviving widow may recover compensation. *Hoage v. Murch Bros. Constr. Co.* (60 App. D. C. 218, 50 Fed. (2d) 983).

The removal of an impediment while parties continue to live together as husband and wife gives rise to a common-law marriage. *Thoma v. Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

The rule which finds a common-law marriage upon the removal of the impediment, has sometimes been applied though one or both of the parties knew of the impediment, and this result seems socially sound. *Thomas v. Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

#### DELINQUENT OR DEPENDENT CHILDREN

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

#### DIVORCED PERSONS

This section does not apply to the prohibited remarriage of a divorced person. *Loughran v. Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684); *Thomas v. Murphy* (71 App. D. C. 69, 107 Fed. (2d) 268).

#### DIVORCE OBTAINED BY FRAUD

Although District residents, seeking divorce in Virginia, are in pari delicto, a divorce fraudulently obtained will render a subsequent marriage by one absolutely void. *Simmons v. Simmons* (57 App. D. C. 216, 19 Fed. (2d) 690, 54 A. L. R. 75).

Status of parties obtaining divorce by falsehood and subterfuge; decree void; subsequent marriage void. Decree not required if marriage void ab initio. *Frey v. Frey* (61 App. D. C. 232, 59 Fed. (2d) 1046).

#### LACHES AND ESTOPPEL

Plaintiff who caused divorce action to be instituted in Virginia by defendant, and thereafter married defendant and lived with her for more than 10 years, is barred by the principles of laches or estoppel from challenging the Virginia decree of divorce. *Goodloe v. Hawk* (— App. D. C. —, 113 Fed. (2d) 753).

#### REMARRIAGE DURING PERIOD FOR APPEAL

Where marriage was annulled, remarriage of wife after final decree of annulment but before expiration of period for appeal was valid. *Tillinghast v. Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

#### STATE LAWS

Marriages not polygamous or incestuous, or otherwise declared void by statute, will, if valid by the law of the state where entered into, be recognized as valid in every other jurisdiction. *Loughran v. Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

Mere statutory prohibition by the state of the domicile either generally of the remarriage of a divorced person, or of remarriage within a prescribed period after the entry of the decree, is given only territorial effect. Such a statute does not invalidate a marriage solemnized in another state in conformity with the laws thereof. *Loughran v. Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

Language of the Illinois statute does not go so far as the language of the District regarding prohibited marriages which "shall be absolutely void ab initio, without



being so decreed, and their nullity may be shown in any collateral proceedings." *Abramson v. Abramson* (60 App. D. C. 119, 49 Fed. (2d) 501).

A marriage which is void under the laws of the state where it was celebrated is void in the District of Columbia. *Rhodes v. Rhodes* (68 App. D. C. 313, 96 Fed. (2d) 715).

Particular public-policy may require annulment of marriage without regard to guilt or innocence of parties affected, but the general public policy in this jurisdiction, as judicially interpreted, no longer prevents application in annulment actions of the laches and estoppel doctrines in determining the effect to be given foreign divorce decrees. *Goodloe v. Hawk* (— App. D. C. —, 113 Fed. (2d) 753).

Divorce decree of Virginia court granted person acquiring domicile to obtain divorce but with intention of remaining for an indefinite period is valid under Virginia law and will be recognized in the District of Columbia. *Goodloe v. Hawk* (— App. D. C. —, 113 Fed. (2d) 753).

#### § 30-102 [14: 2]. Marriage may be decreed to be void.

Any of such marriages may also be declared to have been null and void by judicial decree. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284.)

#### CROSS REFERENCE

Proceedings to annul marriage, §§ 16-402, 16-407 to 16-411.

#### NOTES TO DECISIONS

##### MARRIAGE VOID UNDER STATUTE

Where it appears to the court that a marriage is an absolute nullity, the duty under the law is to decree such a marriage void and prevent any further criminal union of the parties. *Simmons v. Simmons* (57 App. D. C. 216, 19 Fed. (2d) 690, 54 A. L. R. 75).

#### § 30-103 [14: 3]. Marriages void from date of decree—Age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

First. The marriage of an idiot or of a person adjudged to be a lunatic.

Second. Any marriage the consent to which of either party has been procured by force or fraud.

Third. Any marriage either of the parties to which shall be incapable, from physical causes, of entering into the married state.

Fourth. When either of the parties is under the age of consent, which is hereby declared to be eighteen years of age for males and sixteen years of age for females. (Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1.)

#### AMENDMENTS

Act of 1901 was amended by act of 1902 by adding, "Fourth, when either of the parties is under the age of consent, which is hereby declared to be sixteen years of age for males and fourteen for females."

Act of 1937 changed the ages in the "Fourth" section.

#### CROSS REFERENCE

Proceedings for divorce or to annul marriage § 16-402 et seq.

#### NOTES TO DECISIONS

##### ANNULMENT BECAUSE OF LUNACY

"Full force and effect will be given to section 1285 (§ 30-103), if the adjudication of lunacy referred to therein is construed to mean adjudication of lunacy in the suit instituted for the annulment of the marriage, although such adjudication per se might not authorize the appointment of a committee, as under section 115b of the code (§ 21-301), which requires a direct proceeding for the purpose." *Mackey v. Peters* (22 App. D. C. 341), distinguishing *Groff v. Miller* (20 App. D. C. 353).

Suit for annulment of marriage because of lunacy may be filed by a next friend, notwithstanding the fact that a committee has been appointed. *Mackey v. Peters* (22 App. D. C. 341).

#### GROUND FOR ANNULMENT

Concealment of pregnancy as fraud. *Lenoir v. Lenoir* (24 App. D. C. 160).

Mere barrenness is not a ground for the annulment of a marriage, though the prime object of marriage is thus defeated. *Burroughs v. Burroughs* (55 App. D. C. 271, 4 Fed. (2d) 938).

#### REMARriage WITHIN PERIOD FOR APPEAL

A marriage of the unsuccessful party is not void which was performed before the twenty-day period allowed for appeal from an annulment decree, such provision being for the protection of the unsuccessful party. *Tillinghast v. Tillinghast* (58 App. D. C. 107, 25 Fed. (2d) 531).

#### § 30-104 [14: 4]. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

A proceeding to declare the nullity of a marriage may be instituted in the case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

The 1902 amendment struck out the word "contracted" and inserting in lieu thereof the word "contracted."

#### CROSS REFERENCES

Proceedings to annul marriage, § 16-402 et seq.

See note to § 30-103. *Mackey v. Peters* (22 App. D. C. 341).

#### NOTES TO DECISIONS

##### VOID AND VOIDABLE

Statute classifies some marriages as void and others as voidable, and in the latter case prohibits, under some circumstances, the bringing of actions to declare them void. *Rhodes v. Rhodes* (68 App. D. C. 313, 96 Fed. (2d) 715).

#### § 30-105 [14: 5]. Marriage out of District of domiciled persons.

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287.)

#### NOTES TO DECISIONS

##### PROHIBITED REMARRIAGE OF DIVORCED PERSONS

This section has no application to marriages in violation of a statute which prohibits remarriage of party divorced for adultery. *Loughran v. Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

#### § 30-106 [14: 6]. Persons authorized to perform marriage ceremony.

For the purpose of preserving the evidence of marriages in the District, every minister of the gospel appointed or ordained according to the rites and ceremonies of his church, whether his residence be



in the District or elsewhere in the United States or the Territories, may be authorized by any justice of the District Court of the United States for the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any judge or justice of any court of record: *Provided, however,* That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and returns to be made by, a person appointed by such church or religious society for that purpose. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1.)

#### AMENDMENT

The act of 1904 added the proviso.

#### § 30-107 [14: 7]. Marriage performed by unauthorized person—Penalty.

If any one except a minister or other person authorized by the foregoing section shall hereafter celebrate the rites of marriage in said District, he shall be subject to the penalty prescribed in the following section. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289.)

#### § 30-108 [14: 8]. Celebration of marriage without license—Penalty.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to him issued from the clerk's office of said District Court of the United States for the District of Columbia, under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the police court of the District. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329.)

#### AMENDMENT

The act of 1902 inserted after the word "therefor," the words "addressed to him."

#### § 30-109 [14: 8a]. Issuance of license.

A license to marry shall not be issued until three days have elapsed from date of application for issuance of said license. (Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2.)

#### § 30-110 [14: 9]. Duty of clerk before issuing license—Perjury.

It shall be the duty of the clerk of the District Court of the United States for the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291.)

#### § 30-111 [14: 10]. Consent of parent or guardian.

If any male person intending to marry and seeking a license therefor shall be under twenty-one years of age, or any female so intending shall be under eighteen years of age, and shall not have been previously married, the said clerk shall not issue such license unless the father of such person, or, if there be no father, the mother, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the clerk. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292.)

#### NOTES TO DECISIONS

##### MAJORITY OF FEMALE INFANTS

There is no statute in force which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones v. Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

#### § 30-112 [14: 11]. Form of license—Return—Coupon.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section 30-106 to perform or witness the marriage ceremony and shall be in the following form:

Number \_\_\_\_.

To \_\_\_\_\_, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between \_\_\_\_\_, of \_\_\_\_\_, and \_\_\_\_\_, of \_\_\_\_\_, and having done so, you are commanded to make return of the same to the clerk's office of the District Court of the United States for the District of Columbia within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, anno Domini \_\_\_\_\_.

\_\_\_\_\_  
Clerk.

By \_\_\_\_\_ Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number \_\_\_\_.

I, \_\_\_\_\_, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of \_\_\_\_\_ and \_\_\_\_\_, named therein, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:



Number \_\_\_\_\_.

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ were by (or before) me united in marriage in accordance with the license issued by the clerk of the District Court of the United States for the District of Columbia.

Name \_\_\_\_\_,

Residence \_\_\_\_\_.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2.)

#### AMENDMENTS

The 1902 amendment added the provision that the licenses should be addressed to a particular person authorized to perform marriages in the District.

The 1914 amendment made various changes in the form of the licenses and certificates.

#### CROSS REFERENCE

See notes under § 30-106.

### § 30-113 [14:12]. Failure to make return—Penalty.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the police court of said district. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3.)

#### AMENDMENT

The act of 1904 inserted after the word "solemnized," the words "or witnessed."

### § 30-114 [14:13]. Record of clerk—Contents.

The clerk of the said court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from one upward; and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the clerk under his hand and seal, shall be competent evidence of the marriage. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295.)

#### CROSS REFERENCES

Duty of health officer to enforce regulations to secure full and correct records of vital statistics, § 6-102.

Fees for copies of record, § 6-103.

Penalty for making false or fictitious transcript of any record of marriage, §§ 6-302, 6-304.

Proof of marriage in prosecutions for nonsupport of wife or minor children, § 22-904.

### § 30-115 [14:14]. Marriage records transferred from health department.

The clerk of the District Court of the United States for the District of Columbia shall have the same control and custody of the marriage records transferred from the health department as he has of the other marriage records in his office. (Feb. 25, 1929, 45 Stat. 1285, ch. 314.)

#### CROSS REFERENCE

See notes to § 30-114.

### § 30-116 [14:15]. Slave marriages.

All colored persons in the District who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife, and were cohabiting together as such or in any way recognizing the relation as existing on the 25th day of July, 1866, whether the rites of marriage have been celebrated between them or not, are deemed husband and wife, and are entitled to all the rights and privileges and subject to the duties and obligations of that relation in like manner as if they had been duly married according to law. All the children of such persons shall be deemed legitimate, whether born before or after the date mentioned. When such parties have ceased to cohabit before such date, in consequence of the death of the woman or from any other cause, all the children of the woman recognized by the man to be his shall be deemed legitimate. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1296.)

### § 30-117 [14:16]. Issue of marriage of colored persons—Legitimacy—Property rights.

The issue of any marriage of colored persons contracted and entered into according to any custom prevailing at the time in any of the States wherein the same occurred shall, for all purposes of descent and inheritance and the transmission of both real and personal property within the District of Columbia, be deemed and held to be legitimate and capable of inheriting and transmitting inheritance, and taking as next of kin and distributees according to law, from and to their parents or either of them, and from and to those from whom such parents or either of them may inherit or transmit inheritance, anything in the laws of such State to the contrary notwithstanding: *Provided*, That nothing herein shall be construed as implying that any such marriage is not valid or such issue legitimate for all other purposes. (Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297.)

## Chapter 2.—PROPERTY RIGHTS

#### Sec.

- 30-201. Married women—Power to dispose of separate property—Under 21 years of age.
- 30-202. Married women may make covenant running with the land.
- 30-203. Disabilities of infant feme covert—Guardian.
- 30-204. Trustee for separate estate of married woman—Not necessary—Appointment.
- 30-205. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.
- 30-206. Equitable separate estate.
- 30-207. Wife's separate property not liable for husband's debts.
- 30-208. Power of married women separately to trade, to contract and to sue and be sued—Husband not liable for wife's separate contract or tort.
- 30-209. Contracts of married woman deemed made in reference to her separate estate.
- 30-210. Liability of husband for debts of wife before marriage.
- 30-211. Husband liable for wife's acts in certain cases.
- 30-212. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.
- 30-213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.
- 30-214. Insurance payable on death of wife to children, descendants, or her representatives.



Sec.

30-215. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.

30-216. Release of dower.

§ 30-201 [14: 21]. Married women—Power to dispose of separate property—Under 21 years of age.

Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, or otherwise, as fully as if they were unmarried: *Provided*, That no disposition of her real or personal property, or any portion thereof, by deed, mortgage, bill of sale, or other conveyance, shall be valid if made by a married woman under twenty-one years of age. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154.)

## CROSS REFERENCE

Release of dower, § 30-216.

## NOTES TO DECISIONS

## INDORSEMENT OF STOCK CERTIFICATES

The indorsement, by a wife, of stock certificates, delivered to her husband to be used by him as security for a loan, does not violate this section, the wife having no part in the transaction. *Columbia Nat. Bank v. Shacklett* (57 App. D. C. 130, 18 Fed. (2d) 172).

## MAJORITY OF FEMALE INFANTS

There is no statute in force in the District of Columbia which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years. Exceptions to the common-law rule have been provided by statute; these, however, recognize the continued existence of the general rule of the common law. *Jones v. Jones* (63 App. D. C. 373, 72 Fed. (2d) 829, 95 A. L. R. 352).

§ 30-202 [14: 22]. Married women may make covenant running with the land.

In all deeds made after January 1, 1902, to married women of real estate or chattels real it shall be competent for the grantee or lessee to bind herself and her assigns by any covenant running with or relating to said real estate or chattels real the same as if she were a feme sole. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1170.)

§ 30-203 [14: 23]. Disabilities of infant feme covert—Guardian.

In case any married woman entitled to a separate estate as aforesaid shall be an infant under twenty-one years of age, she shall be under the same disabilities in regard thereto as other infants, except as herein elsewhere provided, and a guardian of said estate shall be appointed. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1157.)

## CROSS REFERENCE

Adult at age 18 or marriage where will provides a bequest payable at majority, § 18-722.

§ 30-204 [14: 24]. Trustee for separate estate of married woman—Not necessary—Appointment.

It shall not be necessary for a married woman to have a trustee to secure to her the sole and separate use of her property; but if she desires it she may make a trustee by deed, or she may apply to a court of equity and have a trustee appointed, in which appointment the uses and trusts for which the trustee holds the property shall be declared. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1153.)

§ 30-205 [14: 25]. Husband may convey directly to wife—Rights of creditors—Such conveyance not deemed notice of existence of creditors of husband.

Whenever any interest or estate of any kind in any property, real, personal, or mixed, situate, lying, or being within this District, has been or shall hereafter be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been or shall hereafter be subsequently sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by such wife and husband during their coverture, or after January 1, 1902, by such wife solely or by such wife after such coverture has terminated, or shall after January 1, 1902, be devised or bequeathed by such wife during such coverture or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband, directly or indirectly, to his wife shall not after January 1, 1902, be deemed or taken, at law or in equity, to have given, preserved, or reserved, nor to give, preserve, or reserve, to any subsisting creditor of such husband, by reason of any debt or obligation, claim, or demand whatsoever, any other or greater right, lien, or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators, or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third person. And the fact of such previous sale, conveyance, assignment, mortgage, lease, or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever, shall not after January 1, 1902, be deemed or taken, at law or in equity, to give or impart nor to have given or imparted notice to any third person, his heirs, executors, administrators, or assigns of the existence or of the possibility or probability of the existence of any subsisting creditor or creditors of such husband. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1152.)

§ 30-206 [14: 26]. Equitable separate estate.

Nothing contained in this chapter shall be construed to prevent the creation of equitable separate estates. Said estates shall be held according to the provisions of the respective settlements thereof and shall be subject to and governed by the rules and principles of equity applicable to such estates. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1171.)

§ 30-207 [14: 27]. Wife's separate property not liable for husband's debts.

All the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage from any person whomsoever, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, or personal exertions, or as proceeds of a judgment at law or decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of the husband and shall not



in any way be liable for the payment thereof: *Provided*, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors. (Mar. 3, 1901, 31 Stat. 1373, ch. 854, § 1151.)

## CROSS REFERENCE

Fraudulent conveyances, § 12-401 et seq.

## NOTES TO DECISIONS

## ACTIONS IN REPLEVIN

Either spouse may prosecute replevin against the other, in the courts of the District. *Notes v. Snyder* (55 App. D. C. 233, 4 Fed. (2d) 426, 41 A. L. R. 1052).

## GIFTS BETWEEN HUSBAND AND WIFE

Gifts between husband and wife, followed quickly thereafter by insolvency on the part of the donor, are justly regarded by the courts with suspicion. *Harding v. Aaronson* (63 App. D. C. 107, 69 Fed. (2d) 845).

## GUARANTY OF HUSBAND'S INDEBTEDNESS

Subject to the requirement of the Constitution that full faith and credit shall be given by States to the judicial decrees of other States, a judgment of another State on a guaranty by a married woman of her husband's indebtedness will be enforced, notwithstanding the provisions of above section. *Hieston v. National City Bank* (51 App. D. C. 394, 280 Fed. 525, 24 A. L. R. 1434).

## JUDGMENT SUBJECT TO COLLATERAL ATTACK

A judgment against a married woman is not subject to collateral attack upon an averment that it is founded on the consideration of an accommodation note. *Carroll v. Elkins* (58 App. D. C. 265, 29 Fed. (2d) 638).

## NOTE AND DEED OF TRUST

A note and deed of trust signed by a married woman, as surety for her husband, is void. *Bradbury v. Howard*, (58 App. D. C. 383, 31 Fed. (2d) 222); *Steele v. Harrison* (59 App. D. C. 69, 32 Fed. (2d) 965).

## SURETY FOR HUSBAND

A married woman's note is void when she signed as surety of her husband and it is likewise void in hands of payee's assignee. *Schwartz v. Sacks* (55 App. D. C. 87, 2 Fed. (2d) 188).

Married woman's liability on note dated and made payable in Washington, D. C., which maker signed in Pennsylvania is determined by law of District of Columbia as to question of wife's capacity to sign note as accommodation maker for husband. *Kress v. Baldwin* (64 App. D. C. 66, 74 Fed. (2d) 470).

§ 30-208 [14: 43]. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

Married women shall have power to engage in any business, and to contract, whether engaged in business or not, and to sue separately upon their contracts, and also to sue separately for the recovery, security, or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried; contracts may also be made with them, and they may also be sued separately upon their contracts, whether made before or during marriage, and for wrongs independent of contract committed by them before or during their marriage, as fully as if they were unmarried, and upon judgments recovered against them execution may be issued as if they were unmarried; nor shall any husband be liable upon any contract made by his wife in her own name and upon her own responsibility, nor for any tort committed separately by her out of

his presence without his participation or sanction. (Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1155; May 28, 1926, 44 Stat. 676, ch. 419.)

## AMENDMENT

The act of 1926 struck out the provision "that no married woman shall have power to make any contract as surety or guarantor or as accommodation drawer, acceptor, maker, or indorser."

## CROSS REFERENCE

Actions do not abate because of marriage, § 12-112.

## NOTES TO DECISIONS

## DECISIONS UNDER PRIOR LAW

A married woman who purchases real estate and gives as part payment the promissory notes of herself and husband secured by deed of trust upon the property, a separate suit is maintainable against her as the notes relate to her sole and separate estate. *Sonnemann v. Loeb* (11 App. D. C. 143).

A married woman trading as feme sole may have action for libel concerning her business without joining her husband. *Wills v. Jones* (13 App. D. C. 482).

Under act of Congress June 1, 1896 (29 Stat. 193), known as "Married Woman's Act," a married woman may sue without joinder of husband to recover damages for personal injuries. *Capital Trac. Co. v. Rockwell* (17 App. D. C. 369).

When defendant contracted with plaintiff to borrow the money as her separate property, and his note promised to pay her and not her husband, he could not deny her capacity to sue thereon for his default. *Richards v. Bippus* (18 App. D. C. 293).

Statutes removing disabilities of married women should not be construed so broadly as to permit a partnership between husband and wife. *Norwood v. Francis* (25 App. D. C. 463).

## ACCOMMODATION INDORSERS

Married women may make contracts as accommodation indorsers. *Jett v. Montague Mfg. Co.* (61 App. D. C. 277, 61 Fed. (2d) 918).

## ACTION FOR DAMAGES FROM CONSPIRACY

Wife may maintain an action against persons who formed a conspiracy with her husband to falsely charge her with adultery which was to be brought against her in divorce action. *Ewald v. Lane*, (70 App. D. C. 89, 104 Fed. (2d) 222).

## ACTION IN REPLEVIN

Either spouse may bring replevin against the other, in order to recover possession of personal property if wrongfully detained. *Notes v. Snyder* (55 App. D. C. 233, 4 Fed. (2d) 426, 41 A. L. R. 1052).

## ACTIONS TO RECOVER RENT

Under the District Rent Law, a married woman, who is the owner of "rental property," may exercise all the remedies which are secured to owners as such under the act. *Barbagallo v. Fishbien* (52 App. D. C. 318, 286 Fed. 780).

## INDORSEMENT OF STOCK CERTIFICATES TO HUSBAND

This section is not violated when wife indorsed and delivered stock to her husband as she was not a party to the transactions whereby the several banks made the loans to her husband and received the collateral stock from him. *Columbia Nat. Bank v. Shacklett* (57 App. D. C. 130, 18 Fed. (2d) 172).

## REPEAL OF FORMER STATUTE

This section repeals § 1155, 1901 code, which prohibited married women from being sureties. *Steele v. Harrison* (59 App. D. C. 69, 32 Fed. (2d) 965).

In view of the foregoing judicial history of this section, taken together with the proviso, it was plainly the legislative intent that the repeal of the proviso should remove the restrictions imposed by it upon the rights of married women to make contracts as sureties or guarantors, or as accommodation drawers, acceptors, makers, or indorsers, thereby empowering them to enter into such contracts as



if unmarried. *Jett v. Montague Mfg. Co.* (61 App. D. C. 277, 61 Fed. (2d) 918).

#### SURETY FOR HUSBAND

A married woman cannot sign note as surety for husband. *Schwartz v. Sacks* (55 App. D. C. 87, 2 Fed. (2d) 188).

#### TORT ACTION AGAINST HUSBAND

A wife may not maintain an action for tort committed by her husband upon her person before coverture, where the action is begun, but not brought to justice before marriage. *Spector v. Weisman* (59 App. D. C. 280, 40 Fed. (2d) 792).

§ 30-209 [14: 44]. Contracts of married woman deemed made in reference to her separate estate.

Every contract made by a married woman which she has the power to make shall be deemed to be made with reference to her estate which is made her separate estate by this chapter, and also her equitable separate estate, if any she has, as a source of credit to the extent of her power over the same, unless the contrary intent is expressed in the contract. (Mar. 3, 1901, 31 Stat. 1374, ch. 854. § 1156.)

#### NOTES TO DECISIONS

##### IN GENERAL

A contract clearly within the power of a married woman to make, "must be deemed to have been made with reference to her separate estate, there being no contrary intent expressed. She is therefore liable to be sued separately thereon." *Dobbins v. Thomas* (26 App. D. C. 157). See also *Dobbins v. Thomas* (30 App. D. C. 511).

§ 30-210 [14: 45]. Liability of husband for debts of wife before marriage.

No husband shall be liable in any manner for any debts of his wife contracted or for any claims or demands of any kind against her arising prior to marriage, but she and her property shall remain liable therefor in the same manner as if the marriage had not taken place. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1166.)

##### CROSS REFERENCE

Actions do not abate because of marriage, § 12-112.

§ 30-211 [14: 46]. Husband liable for wife's acts in certain cases.

Nothing in this chapter shall be construed to relieve the husband from liability for the debts, contracts, or engagements which the wife may incur or enter into upon the credit of her husband, or as his agent, or for necessities for herself or for his or their children; but as to all such cases his liability shall be or continue as at common law. (Mar. 3, 1901, 31 Stat. 1377, ch. 854, § 1177.)

##### CROSS REFERENCES

Criminal liability for failure to support wife, § 22-903. Joint deposits, accounts, or safety-deposit boxes, § 26-201 et seq.

#### NOTES TO DECISIONS

##### LIABILITY FOR NECESSARIES

This section "does not undertake to provide that she shall not render herself liable for necessities when contracted for independently of her husband and with reference to her separate estate, but merely that, in such cases, the husband shall not be relieved of any liability therefor that he may be under by virtue of the common law. It does not substitute the common-law liability of the husband for that of the wife, but retains it as an additional security for the benefit of the other contracting party." *Dobbins v. Thomas* (26 App. D. C. 157).

#### PURCHASES ON CREDIT

A wife, who has been furnished with ample means with which to pay cash for articles of clothing may not purchase the same on her husband's credit. *Saks v. Huddleston* (59 App. D. C. 133, 36 Fed. (2d) 537).

§ 30-212 [14: 47]. Insurance of husband's life—By wife—By husband—Proceeds taken free from claims.

Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161.)

§ 30-213 [14: 48]. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162.)

§ 30-214 [14: 49]. Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163.)

§ 30-215 [14: 50]. Receipt of married woman for payment of money deposited by her—Deposits made to defraud creditors.

The receipt of any married woman for the payment of money deposited by her before or after marriage shall be a valid discharge to any individual or corporation making such payment: *Provided*, That nothing contained in this section shall prevent any creditor of the husband from attaching the same or restraining the payment by injunction if the deposit was made in fraud of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1164.)

§ 30-216 [14: 51]. Release of dower.

If the wife of the party executing a deed, being not less than eighteen years of age, shall desire to release her dower in the property conveyed, she may do so either by joining in the same deed or by a separate deed, wherever executed, signed, sealed, and ac-



knowledge by her in the same manner as provided in section 45-402, and her acknowledgment shall be certified in like manner. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329.)

#### AMENDMENT

Act of 1901 read as follows: "If the wife of the party executing said deed, being not less than eighteen years of age, shall desire to release her right of dower in the property conveyed, she shall unite in the deed with her husband and sign, seal, and acknowledge the same in the same manner as her husband, and the officer taking her acknowledgment shall add to the above form of certificate a further certificate to the following effect, namely:

"And at the same time personally appeared before me, in said District, E F, the wife of said C D, personally well known to me (or proved by the oath of credible witnesses) to be such, and acknowledged the same to be her act and deed.

"Such wife, however, may release her right of dower by her separate deed, when the release claims or derives title from, by, through or under her husband."

#### CROSS REFERENCES

Conveyance of real estate acquired after insanity or absence for seven years of wife, § 18-204.

Release of dower of a person non compos mentis, § 21-301.

#### NOTES TO DECISIONS

##### DEED BY HUSBAND AND WIFE

By a deed, voluntarily executed and duly acknowledged by husband and wife, the entire title of both may be conveyed. *Hitz v. Jenks* (123 U. S. 297, 31 L. Ed. 156, 8 Sup. Ct. 143).

"The relinquishment of an inchoate right of dower which a married woman makes by joining in a deed with her husband, can operate against her only by way of estoppel." *Follansbee v. Follansbee* (1 App. D. C. 326).

If the conveyance or instrument in which the wife joins is void, or ceases for any reason to operate, and no title has passed, or none remained, the release does not, after that, operate against the wife. *Follansbee v. Follansbee* (1 App. D. C. 326).

##### MORTGAGES

When a wife joins in a mortgage, she retains her dower in the property, subject to the mortgage. *Follansbee v. Follansbee* (1 App. D. C. 326).



## TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.		Sec.
1.	Board of Education.....	31-101
2.	Compulsory school attendance and work permits.....	31-201
3.	Tuition of nonresidents.....	31-301
4.	Free textbooks.....	31-401
5.	Vocational rehabilitation of residents of the District of Columbia.....	31-501
6.	Teachers, school officers, and other employees in general.....	31-601
7.	Retirement of public school teachers....	31-701
8.	Use of school buildings.....	31-801
9.	Medical and dental colleges.....	31-901
10.	The Columbia Institution for the Deaf...	31-1001
11.	Miscellaneous.....	31-1101

### Chapter 1.—BOARD OF EDUCATION

Sec.	
31-101.	Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and supersedeas bond.
31-102.	Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.
31-103.	Determination of general policies—Expenditures of funds—Appointment of teachers and employees.
31-104.	Annual estimates.
31-105.	Superintendent—Appointment—Term of office—Duties.
31-106.	Superintendent authorized to act between meetings of the board.
31-107.	Acting superintendent authorized to act in absence of superintendent.
31-108.	Removal of superintendent.
31-109.	Assistant superintendents of schools—Duties.
31-110.	Director of intermediate instruction for white schools—Appointment—Duties.
31-111.	Supervisor of manual training—Appointment—Duties.
31-112.	Classification of academic and scientific subjects in certain high schools.
31-113.	"Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.
31-114.	Teachers and officials—Examination—Qualifications—Appointments.
31-115.	Principals of schools—Duties.
31-116.	Teachers on trial or under investigation to have counsel.
31-117.	Masculine pronoun to include both male and female.
31-118.	Teachers' college—Expansion of normal schools.
31-119.	Board to designate number of classrooms in elementary school buildings.
31-120.	Accrediting junior colleges—Effect.

§ 31-101 [7: 1]. Qualifications and appointment—Compensation—Secretary—Meetings—Members exempt from personal liability—Costs and supersedeas bond.

The control of the public schools of the District of Columbia is hereby vested in a Board of Education to consist of nine members all of whom shall have been for five years immediately preceding their appointment bona fide residents of the District of Columbia

and three of whom shall be women. The members of the Board of Education shall be appointed by the District court judges of the District of Columbia for terms of three years each, and members shall be eligible for reappointment. The members shall serve without compensation. Vacancies for unexpired terms, caused by death, resignation, or otherwise, shall be filled by the judges of the District Court of the United States for the District of Columbia. The board shall appoint a secretary, who shall not be a member of the board, and they shall hold stated meetings at least once a month during the school year and such additional meetings as they may from time to time provide for. All meetings whatsoever of the board shall be open to the public, except committee meetings dealing with the appointment of teachers. The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the said board performed in good faith in which the said members participate, nor shall any member of said board be liable for any costs that may be taxed against them or the board on account of any such official action by them as members of the said board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105.)

#### AMENDMENT

Act of June 20, 1906 was amended so as to relieve individual members of the Board of Education of personal liability for acts of the board.

#### CROSS REFERENCES

Accrediting junior colleges, § 31-120.  
 Child labor and work permits generally, powers and duties of the Board of Education, title 36, ch. 2.  
 Compulsory school attendance, exemptions, work permits, powers and duties of board, § 31-201 et seq.  
 Department of school attendance and work permits, § 31-211 et seq.  
 Duty to educate colored children, § 31-1110.  
 Duty to furnish schoolrooms and teachers for colored persons, § 31-1113.  
 Free textbooks and school supplies, § 31-401 et seq.  
 Funds for education of children of men who lost their lives in the World War, § 31-1114.  
 Jurisdiction and control over school buildings, § 31-801 et seq.  
 Power to license institutions of learning, §§ 29-415 to 29-419.  
 Religious schools not entitled to privileges and benefits of school laws of district, § 29-512.  
 Retirement of public school teachers, § 31-701 et seq.  
 School census, § 31-208 et seq.  
 Selection of school to be attended, approval of board, § 31-1111.



§ 31-102 [7: 2]. Appointment — Promotion — Transfer or dismissal of directors, teachers, upon recommendation of superintendent.

No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate to the superintendent of schools, shall be made by the Board of Education, except upon the written recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

#### CROSS REFERENCE

General provisions concerning teachers, school officers, and other employees, title 31, ch. 6.

#### NOTES TO DECISIONS

##### APPOINTMENT OF TEACHERS

The secretary of the board is not empowered to appoint teachers. This power is vested in the board. *Coleman v. District of Columbia* (51 App. D. C. 352, 279 Fed. 990).

Letter from secretary notifying teacher of appointment does not estop the board from denying that she was appointed without condition. *Coleman v. District of Columbia* (51 App. D. C. 352, 279 Fed. 990).

##### MANDAMUS TO RESTORE POSITION

Board of Education may be compelled by mandamus to restore to position a school matron dismissed without authority from superintendent. *Whitwell v. United States ex rel. Selden* (61 App. D. C. 169, 58 Fed. (2d) 895).

#### RULES OF BOARD

The board being empowered to make rules and regulations, they must be deemed to have the force and effect of law. *United States ex rel. Denney v. Callahan* (54 App. D. C. 61, 294 Fed. 992); *United States ex rel. Cromwell v. Doyle* (69 App. D. C. 215, 99 Fed. (2d) 448).

§ 31-103 [7: 3]. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

The board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as provided in section 47-101, under the direction and control of the Commissioners of the District of Columbia. The board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

#### CROSS REFERENCE

See notes to § 31-101.

§ 31-104 [7: 4]. Annual estimates.

The Board of Education shall annually on the first day of October transmit to the commissioners of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said commissioners shall transmit the same in their annual estimate of appropriations for the District of Columbia, with such recommendations as they may deem proper. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2.)

#### CROSS REFERENCES

Annual estimate of salaries, § 31-606.

Apportionment of funds between white and colored schools, § 31-1112.

Budget estimates §§ 47-202, 47-203.

Funds for education of children of men who lost their lives in the World War, § 31-1114.

#### STATUTORY REFERENCE

Portions of this section are qualified by the National Budget and Audit System. (See U. S. C., title 31, ch. 1.)

§ 31-105 [7: 5]. Superintendent—Appointment—Term of office—Duties.

The board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the board and the right to speak on all matters before the board, but not the right to vote. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

#### CROSS REFERENCES

Approval of deaf mutes to Columbia Institution for the Deaf, § 31-1008.

Approval of free textbooks and supplies, § 31-404.

Excusing children who are regularly employed from school attendance, § 31-202.

Ex officio member of Commission on Licensure to Practice Healing Art, § 2-103.

Membership and duties on board of examiners, §§ 31-601, 31-602.

Removal of superintendent, § 31-108.

School census, § 31-208 et seq.

§ 31-106 [7: 5a]. Superintendent authorized to act between meetings of the board.

The superintendent of schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1.)

#### CROSS REFERENCE

Appointment, promotion, transfer, or dismissal of teachers or directors, recommendation of superintendent, § 31-102.

§ 31-107 [7: 5b]. Acting superintendent authorized to act in absence of superintendent.

The authority conferred on the superintendent of schools by section 31-106 shall, during his authorized absence, devolve on the person designated as acting superintendent of schools. (Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2.)

#### CROSS REFERENCE

See note to section 31-106.

§ 31-108 [7: 6]. Removal of superintendent.

The board shall have power to remove the superintendent at any time for adequate cause affecting his character and efficiency as superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-109 [7: 41]. Assistant superintendents of schools—Duties.

There shall be two first assistant superintendents of schools, one white first assistant superintendent



for the white schools who, under the direction of the superintendent of schools, shall have general supervision over the white schools; and one colored first assistant superintendent for the colored schools who, under the direction of the superintendent of schools, shall have sole charge of all employees, classes, and schools in which colored children are taught. The first assistant superintendent shall perform such other duties as may be prescribed by the superintendent of schools. (June 4, 1924, 43 Stat. 374, ch. 250, § 12.)

#### COMPILER'S NOTE

Title 7, §§ 7 and 8 of the 1929 code consisting of § 3 of the act of June 20, 1906, 34 Stat. 317, ch. 3446, in part, have been largely superseded by the above section. Said sections 7 and 8 of the 1929 Code are set out here as a note so as to make available those portions that have not been superseded. They read as follows:

*7. Assistant superintendents of white and colored schools—Appointment—Duties of assistant superintendent of white schools.*—The board, upon the written recommendation of the superintendent of schools, shall also appoint one white assistant superintendent for the white schools and one colored assistant superintendent for the colored schools. The white assistant superintendent, under the direction of the superintendent of schools, shall have general supervision over the white schools, and is specifically charged, under the direction of the superintendent, with the unification, as far as may be practicable, of the educational work of the white high schools and of all academic and scientific subjects in the McKinley Manual Training School and Business High School. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

*8. Colored assistant superintendent—Duties.*—The colored assistant superintendent, under the direction of the superintendent of schools, shall have sole charge of all teachers, classes, and schools in which colored children are taught. And he is specifically charged, under the direction of the superintendent, with the unification, so far as may be practicable, of the educational work of the colored high schools, and of all the academic and scientific subjects of the Armstrong Manual Training School. And he also shall be charged specifically, under the direction of the superintendent, with the unification of the educational work of the intermediate grades of the colored schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

#### CROSS REFERENCES

Duty of board to furnish schoolrooms and teachers for colored persons, § 31-1113.

Duty to educate colored children, § 31-1110.

Membership on board of examiners, § 31-602.

§ 31-110 [7: 9]. Director of intermediate instruction for white schools—Appointment—Duties.

The board, upon the written recommendation of the superintendent of schools, shall appoint a director of intermediate instruction for the white schools who shall have charge under the direction of the superintendent of the unification of educational work of grades five to eight, inclusive. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-111 [7: 10]. Supervisor of manual training—Appointment—Duties.

There shall be appointed by the board a supervisor of manual training who, under the direction of the superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3.)

§ 31-112 [7: 11]. Classification of academic and scientific subjects in certain high schools.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern,

Western, and Business High Schools, and the McKinley Manual Training School into eight departments so that each department shall contain correlated subjects and the M Street High School and the Armstrong Manual Training School shall be similarly classified into four departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5.)

§ 31-113 [7: 12]. "Head of the department" and "head teacher" defined—Duties—Limitation as to number of students in classes.

Whenever a department includes two or more high schools then the teacher in charge of the department shall be designated "head of the department," otherwise the teacher in charge of the department shall be designated "head teacher": *Provided*, That heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school: *Provided further*, That no class shall be formed in the high schools with less than ten pupils for a period not longer than fifteen days. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; June 26, 1912, 37 Stat. 157, ch. 182.)

#### COMPILER'S NOTE

The 1912 act does not amend act of June 20, 1906, but provides for an allowance to principals of grade school buildings for services rendered as such in addition to their grade salary.

§ 31-114 [7: 13]. Teachers and officials—Examination—Qualifications—Appointments.

No teacher, head of department, principal, or supervising principal shall be appointed to any position in the graded schools, high schools, manual training schools, or teachers' college, and no director, assistant director, or teacher of special studies shall be appointed until he shall have passed an examination prescribed by the boards of examiners. No person without a degree from an accredited college, or a graduation certificate from an accredited normal school, such normal school graduate to have had at least five years of experience as a teacher in a high school, shall after June 20, 1906, be appointed to teach any academic or scientific subjects in the teachers' college, high, and manual training schools. This provision for examination shall not apply to teachers coming from the teachers' college, or teachers being advanced from the different classes in the grade schools. No teacher of manual training, drawing, domestic science, domestic art, music and physical culture in the teachers' college, high and manual training schools shall be appointed without like qualifications to those required of teachers of academic and scientific subjects in the high schools, and teachers of those subjects shall receive their longevity increase according to their previous number of years of experience in teaching in accredited normal, high and manual training high school. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 26, 1912, 37 Stat. 156, ch. 182; Feb. 25, 1929, 45 Stat. 1276, ch. 314.)

#### AMENDMENT

This section is a composite of credits cited in the history line.



## CROSS REFERENCE

Board of examiners, powers and duties, § 31-601 et seq.

## STATUTORY REFERENCE

Teaching the nature and effect of alcoholic drinks and narcotics on the human system, and requiring teachers to be qualified in the teaching thereof, U. S. C., title 20, §§ 111-113.

## NOTES TO DECISIONS

## QUALIFICATIONS

When teacher is promoted from class 4 to position of high school teacher in class 6, she is entitled to the increase in salary provided by this act. *District of Columbia v. Gardner* (54 App. D. C. 390, 298 Fed. 1005).

Possession of college degree does not alone fulfill eligibility requirements for senior and normal school teachers. *United States ex rel. Gillem v. Carusi* (59 App. D. C. 46, 32 Fed. (2d) 942).

## § 31-115 [7: 14]. Principals of schools—Duties.

Principals of normal, high, and manual training schools shall each have entire control of his school, both executive and educational, subject only in authority to the superintendent of schools for the white schools and to the colored first assistant superintendent for the colored schools, to whom in each case he shall be directly responsible. (June 20, 1906, 34 Stat. 320, ch. 3446, § 7; June 4, 1924, 43 Stat. 370, ch. 250, art. 3.)

## COMPILER'S NOTES

Act of June 4, 1924, does not amend act of June 20, 1906, but places various teachers and principals in salary classes.

Word "first" inserted by compiler on authority of § 31-109.

## § 31-116 [7: 15]. Teachers on trial or under investigation to have counsel.

When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection. (June 20, 1906, 34 Stat. 321, ch. 3446, § 10.)

## CITED

*Nalle v. Oyster* (230 U. S. 165, 57 L. Ed. 1439, 33 Sup. Ct. 1043).

## § 31-117 [7: 16]. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12.)

## § 31-118 [7: 17]. Teachers' college—Expansion of normal schools.

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils: *Provided*, That the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the two existing normal schools into teachers' colleges, and at the end of the fourth year thereof to award appropriate degrees. (Leg. Assem., June 23, 1873, p. 50, ch. 8, § 3; 45 Stat. 1276, ch. 314.)

## AMENDMENT

The act of February 25, 1929, added the proviso.

## § 31-119 [7: 40]. Board to designate number of classrooms in elementary school buildings.

For the purpose of determining the classification of teaching principals and administrative principals it shall be the duty of the Board of Education, on the recommendation of the superintendent of the schools, to designate the number of classrooms in each elementary school building. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 11.)

## AMENDMENT

Although the 1924 act purports to amend the 1906 act, no provisions similar to this section appear in the earlier act.

## § 31-120. Accrediting junior colleges—Effect.

The Board of Education shall be, and is hereby, authorized and empowered to accredit junior colleges operating within the District of Columbia: *Provided*, That the entrance requirements of such junior colleges be not less than high-school graduation, and the number of semester hours required for the title Associate in Arts or Associate in Science be not less than sixty, and the number and character of the courses offered and the number and qualifications of the faculty be reasonable, and the institution be possessed of suitable classroom, laboratory, and library equipment.

That accreditation by the Board of Education of the District of Columbia shall have the same force and effect as is usual in the case of accreditation by the various accrediting agencies of the several states of the Union. (July 2, 1940, 54 Stat. —, ch. 523.)

## Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

## Sec.

- 31-201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.
- 31-202. Employed children between 14 and 16 excused from attendance after completing eighth grade.
- 31-203. Mentally or physically unfit excused from attendance—Specialized instruction.
- 31-204. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.
- 31-205. Daily record of attendance.
- 31-206. Designated absences in a month to be reported.
- 31-207. Failure to keep child at school a misdemeanor—Penalty.

## SCHOOL CENSUS

- 31-208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.
- 31-209. Enrollment and withdrawal of pupils to be reported.
- 31-210. Neglect or refusal to furnish information for enumeration—Penalty.

## ADMINISTRATION

- 31-211. Department of school attendance and work permits—Creation.
- 31-212. Director—Appointment—Employees—Competitive examinations.
- 31-213. Juvenile court given jurisdiction.



§ 31-201 [7: 91]. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.

Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of seven and sixteen years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in session: *Provided*, That instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public school. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 1.)

#### CROSS REFERENCES

Board of education, § 31-101 et seq.  
 Child labor and working permits generally, title 36, ch. 2.  
 Department of school attendance and work permits, § 31-211 et seq.  
 Duty to educate colored children, § 31-1110.  
 Length of school day, § 31-1101.  
 School census, § 31-208 et seq.  
 Selection of school to be attended, § 31-1111.

§ 31-202 [7: 92]. Employed children between 14 and 16 excused from attendance after completing eighth grade.

Any child between the ages of fourteen and sixteen years who has completed satisfactorily the eighth-grade course of study prescribed for the public elementary schools of the District of Columbia, or a course of study deemed by the Board of Education equivalent thereto, may be excused by the superintendent of schools from further attendance at school under the provisions of sections 31-201 to 31-210, provided he is actually, lawfully, and regularly employed. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 2.)

#### CROSS REFERENCES

Powers and duties of superintendent, § 31-105.  
 See notes to § 31-201.

§ 31-203 [7: 93]. Mentally or physically unfit excused from attendance—Specialized instruction.

The Board of Education of the District of Columbia may issue a certificate excusing from attendance at school a child who, upon examination ordered by such board, is found to be unable mentally or physically to profit from attendance at school: *Provided, however*, That if such examination shows that such child may benefit from specialized instruction adapted to his needs, he shall attend upon such instruction. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 3.)

§ 31-204 [7: 94]. Board of Education to define valid excuses for absence—Absence without valid excuse unlawful.

The Board of Education shall define in its rules and regulations valid excuses for absence from school, and the absence of a child between the ages of seven and sixteen years for any reason other than so defined as valid shall be unlawful. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 4.)

§ 31-205 [7: 95]. Daily record of attendance.

An accurate daily record of the attendance of all children between the ages of seven and sixteen years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce sections 31-201 to 31-210, who may inspect and copy the same. (Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, § 5.)

§ 31-206 [7: 96]. Designated absences in a month to be reported.

It shall be the duty of every principal or head teacher of every public, private, or parochial school, or private teacher to report to the department of school attendance and work permits the name and address of any child between the ages of seven and sixteen years enrolled in his school whenever such child has been absent from school two day sessions or four one-half day sessions or more in any school month, together with the reason for such absence as far as known. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 6.)

§ 31-207 [7: 97]. Failure to keep child at school a misdemeanor—Penalty.

The parent, guardian, or other person residing permanently or temporarily in the District of Columbia and having charge or control of any child between the ages of seven and sixteen years who is unlawfully absent from public or private school or private instruction shall be guilty of a misdemeanor, and upon conviction of failure to keep such child regularly in public or private school or to cause it to be regularly instructed in private, shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court: *Provided*, That each two days such child remains away from school unlawfully shall constitute a separate offense: *Provided further*, That upon conviction of the first offense, sentence may, upon payment of costs, be suspended and the defendant placed on probation. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. I, § 7.)

#### SCHOOL CENSUS

§ 31-208 [7: 98]. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.

It shall be the duty of the director of school attendance and work permits, under instruction of the superintendent of schools, approved by the Board of Education, to cause to be made, annually or as frequently as may be found necessary or desirable, a complete census of all children between the ages of three and eighteen years permanently or temporarily residing in the District of Columbia. Such census shall be amended from day to day as changes of residence occur among children within the ages prescribed in sections 31-201 to 31-210, and as other persons come within the ages prescribed, and as other persons within such ages shall become residents of the District. The record of such enumeration of children shall give the full name, address, race, sex, and date and place of birth of every such child, the



school attended by him, and if the child is not at school the name and address of his employer, if any, and the name, address, and occupation of the parents or guardian. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1.)

**§ 31-209 [7: 99]. Enrollment and withdrawal of pupils to be reported.**

It shall be the duty of the principal or head teacher of every public, private, or parochial school or private teacher, in accordance with the rules adopted by the Board of Education, to report to the director of the department of school attendance and work permits the name, address, sex, age, and race of every child under eighteen years of age residing permanently or temporarily in the District of Columbia who enrolls in or withdraws from his school. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2.)

**§ 31-210 [7: 100]. Neglect or refusal to furnish information for enumeration—Penalty.**

Any parent, guardian, custodian, principal, or teacher of a child between the ages of three and eighteen who willfully neglects or refuses to provide the information required by sections 31-201 to 31-210, or who knowingly makes any false or untrue statement, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of \$10 or by commitment to jail for five days, or by both, at the discretion of the court. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3.)

#### ADMINISTRATION

**§ 31-211 [7: 141]. Department of school attendance and work permits—Creation.**

The Board of Education is hereby authorized to consolidate the administrative duties incident to the enforcement of the provisions of sections 31-201 to 31-213 and of the act to regulate child labor under a single division to be known as the department of school attendance and work permits. (Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. III, § 1.)

#### CROSS REFERENCE

Child Labor Law and powers and duties of Board of Education, title 36, ch. 2.

**§ 31-212 [7: 142]. Director — Appointment — Employees—Competitive examinations.**

The Board of Education is hereby authorized, empowered, and directed to appoint a director of said department whose rank shall correspond to that of other directors who serve as officers of the Board of Education, and who shall be paid the same salary as said directors, and who shall be known as the Director of the Department of School Attendance and Work Permits, and also to appoint such a number of attendance officers, inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of sections 31-201 to 31-213.

Such appointments, other than that of the director of said department and clerks, shall be made from a list of applicants obtained from open competitive examinations conducted by the respective boards of examiners of the Board of Education, and designed to test the fitness of the applicants for the duties to be performed. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 2.)

**§ 31-213 [7: 143]. Juvenile court given jurisdiction.**

The juvenile court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 31-201 to 31-213. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26.)

#### AMENDMENT

The act of 1928 changed the words "from" to read "under."

#### Chapter 3.—TUITION OF NONRESIDENTS

##### Sec.

- 31-301. Payment of tuition by nonresidents—Board of Education to fix amount of tuition—Payments deposited in treasury.
- 31-302. Taxes levied and paid for year preceding time of levying tuition charge credited.
- 31-303. Admission of pupils whose parents are employed in the District of Columbia.
- 31-304. Soldiers and sailors on duty at stations adjacent to District of Columbia admitted without tuition.
- 31-305. Children of officers and men of Army and Navy and of employees of United States stationed outside District admitted without tuition.

**§ 31-301 [7: 161]. Payment of tuition by nonresidents—Board of Education to fix amount of tuition—Payments deposited in treasury.**

(Except as otherwise provided in this chapter) pupils shall not be admitted to or taught free of charge in the public schools of the District of Columbia who do not reside in said District, or who during such tutelage do not own property in and pay taxes levied by the government of the District of Columbia in excess of the tuition charged under this section to other nonresident pupils, or whose parents do not reside or are not engaged in public duties therein, or during such tutelage pay taxes levied by the government of the District of Columbia in excess of the tuition charged under this section to other nonresident pupils: *Provided*, That any other nonresident pupil may be admitted to and taught in said public schools on the payment of such amount, to be fixed by the Board of Education with the approval of the Commissioners of said District, as will cover the expense of tuition and cost of textbooks and school supplies used by such pupil; and all payments under this section shall be paid into the Treasury of the United States, to the credit of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1056, ch. 422, § 1; Apr. 14, 1906, 34 Stat. 113, ch. 1623; June 26, 1912, 37 Stat. 161, ch. 182.)

#### COMPILER'S NOTE

Act 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows:

"Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, \* \* \* \* \*

After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes



the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, \$9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

The words in parentheses were inserted by the compiler.

#### AMENDMENT

The act of 1906 added provisions for exempting non-resident children owning property in and paying taxes levied by the District and those whose parents pay taxes from paying nonresident tuition. The act of 1912 added the provision that such taxes must be in excess of tuition charged other nonresident pupils. For the amendment of 1922 see the compiler's note above.

Acts of 1906 and 1912 both contained provisions that the money collected be paid into the Treasury of the United States, one-half to credit of United States and one-half to credit of District of Columbia.

#### CROSS REFERENCES

Admission of nonresident pupils, §§ 31-303 to 31-305.

Disposition of tuition, § 47-126.

Funds for education of children of men who lost their lives in the World War, § 31-1114.

#### NOTES TO DECISIONS

##### TUITION

That part of this section relative to the admission of nonresident pupils on payment of tuition is permissive and not mandatory. *Ballou v. Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556).

§ 31-302 [7: 162]. Taxes levied and paid for year preceding time of levying tuition charge credited.

The taxes levied by the government of the District of Columbia and paid for the year next preceding the time of levying tutelage charges by nonresident pupils or the parents of nonresident pupils shall be accepted as a credit or part credit, as the case may be, on said tutelage. (July 21, 1914, 38 Stat. 536, ch. 191.)

#### NOTES TO DECISIONS

##### IN GENERAL

It is natural and desirable that such children as may, should go to Washington for a part, at least, of their

educational experience, even though nonresidents' tuition fees may be exacted, and it would be indeed a new principle of taxation if exemption should be limited in favor of institutions which excluded all except residents. *District of Columbia v. Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 31-303 [7: 163]. Admission of pupils whose parents are employed in the District of Columbia.

All pupils whose parents are employed officially or otherwise in the District of Columbia shall be admitted and taught free of charge in the schools of said District. (Mar. 3, 1915, 38 Stat. 910, ch. 80, § 1.)

#### NOTES TO DECISIONS

##### MANDAMUS

Statute being mandatory and clear, the duty of the appellant to admit the appellee to the public schools of the District was purely ministerial. Mandamus is the orthodox remedy to compel the performance of a ministerial duty. *Ballou v. Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556).

§ 31-304 [7: 164]. Soldiers and sailors on duty at stations adjacent to District of Columbia admitted without tuition.

Soldiers and sailors of the United States not residents of the District of Columbia who are on duty at stations adjacent to the District of Columbia shall be admitted for special instruction to the day schools and night schools of the District of Columbia without payment of tuition. (Mar. 28, 1918, 40 Stat. 470, ch. 28, § 1.)

§ 31-305 [7: 165]. Children of officers and men of Army and Navy and of employees of United States stationed outside District admitted without tuition.

The children of officers and men of the United States Army, Navy, and Marine Corps and children of other employees of the United States stationed outside of the District of Columbia shall be admitted to the public schools without payment of tuition. (May 10, 1926, 44 Stat. 433, ch. 276, § 1; Mar. 2, 1927, 44 Stat. 1314, ch. 271, § 1; May 21, 1928, 45 Stat. 662, ch. 659, § 1; Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1 and subsequent appropriation acts down to and including June 12, 1940, 54 Stat. —, ch. 333, § 1.)

#### AMENDMENT

The language of this section is repeated in all appropriation acts subsequent to the Act of 1928, cited to the text.

#### NOTES TO DECISIONS

##### PROVISIONS MANDATORY

This section is mandatory, and although many hardships would come about due to insufficient funds to take care of resident pupils, it was the duty of appellant to admit appellee to the public schools of the District. *Ballou v. Kemp* (68 App. D. C. 7, 92 Fed. (2d) 556.)

#### Chapter 4.—FREE TEXTBOOKS

##### Sec.

- 31-401. Textbooks and supplies furnished without charge.
- 31-402. Books—Property of District—Loaned to students.
- 31-403. Parents and guardians responsible for books—Liability.
- 31-404. Limitation on purchases.
- 31-405. Sale or exchange authorized.
- 31-406. Expense of textbooks and supplies.

§ 31-401 [7: 253]. Textbooks and supplies furnished without charge.

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools,



public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1.)

## CROSS REFERENCE

School official may not profit from purchase of school supplies, § 31-1104.

§ 31-402 [7: 254]. Books—Property of District—Loaned to students.

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2.)

## CROSS REFERENCE

Powers and duties of Superintendent, § 31-105.

§ 31-403 [7: 255]. Parents and guardians responsible for books—Liability.

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3.)

§ 31-404 [7: 256]. Limitation on purchases.

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the superintendent of schools and formally approved by the Board of Education. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4.)

## CROSS REFERENCE

Board of Education, powers and duties, § 31-101.

§ 31-405 [7: 257]. Sale or exchange authorized.

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5.)

§ 31-406 [7: 258]. Expense of textbooks and supplies.

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6.)

## Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

## Sec.

31-501. Federal Board for Vocational Training to provide for rehabilitation.

31-502. Definitions.

31-503. Cooperation with board authorized—United States Public Health Service—Plan of cooperation for rehabilitation of civil employees of the United States authorized.

31-504. Rules and regulations to be prescribed.

31-505. Expenditures by board authorized.

31-506. Annual appropriation authorized—Equal appropriation by District.

31-507. Reports to Congress.

§ 31-501 [7: 201]. Federal Board for Vocational Training to provide for rehabilitation.

The Federal Board for Vocational Education is authorized and directed to provide for the vocational rehabilitation and return to employment of any disabled resident of the District of Columbia. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 1.)

§ 31-502 [7: 202]. Definitions.

For the purposes of sections 31-501 to 31-507 (1) the term "disabled resident of the District of Columbia" means any bona fide resident in the District of Columbia who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is or may be expected to become totally or partially incapacitated for remunerative occupation; and (2) the term "vocational rehabilitation" means the rendering of any such disabled resident fit to engage in a remunerative occupation. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 2.)

§ 31-503 [7: 203]. Cooperation with board authorized—United States Public Health Service—Plan of cooperation for rehabilitation of civil employees of the United States authorized.

(a) The United States Public Health Service is authorized and directed to cooperate with the Federal Board for Vocational Education in carrying out the provisions of sections 31-501 to 31-507, and the board may, in carrying out such provisions, obtain the cooperation of (1) any other establishment in the executive branch of the Government; (2) any department or agency of the government of the District of Columbia; (3) any State, Territory, or political subdivision thereof; or (4) any private agency or person.

(b) The Federal Board for Vocational Education and the United States Employees' Compensation Commission are authorized and directed to formulate a plan of cooperation for the vocational rehabilitation of civil employees of the United States disabled while in the performance of duty and who reside in the District of Columbia, and such board may in carrying out the provisions of sections 31-501 to 31-507, insofar as it applies to such civil employees, carry out such plan. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 3.)

§ 31-504 [7: 204]. Rules and regulations to be prescribed.

The board is authorized to prescribe such rules and regulations as may be necessary or appropriate to carry out the provisions of sections 31-501 to 31-507. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 4.)

§ 31-505 [7: 205]. Expenditures by board authorized.

The Federal Board for Vocational Education is authorized to make such expenditures (including expenditures for personal services at the seat of government and elsewhere, for printing and binding, for traveling and subsistence expenses, for the payment of tuition to schools, for the compensation of tutors, for the purchase of prosthetic appliances and instructional supplies and equipment, and for the payment of necessary expenses of persons undergoing vocational rehabilitation) as may be necessary



to carry out the provisions of sections 31-501 to 31-507. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 5.)

§ 31-506 [7: 206]. Annual appropriation authorized—Equal appropriation by District.

For the purpose of carrying out the provisions of sections 31-501 to 31-507 there is authorized to be appropriated to the Federal Board for Vocational Education a sum not to exceed \$25,000 for each fiscal year: *Provided*, That no such appropriations of Federal funds shall be available for expenditure except when matched by equal appropriations of District of Columbia funds which are hereby authorized. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 6; Apr. 17, 1937, 50 Stat. 69, ch. 110.)

#### AMENDMENT

This section, amending act of February 23, 1929, raised the appropriation from \$15,000 to \$25,000.

§ 31-507 [7: 207]. Reports to Congress.

The board shall submit to Congress on or before the first day of each regular session a report of all rehabilitation service provided and of all expenditures made under sections 31-501 to 31-506 during the preceding fiscal year. (Feb. 23, 1929, 45 Stat. 1260, ch. 303, § 7.)

### Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

#### Sec.

- 31-601. Board of examiners—Constitution—Designation of members.
- 31-602. Chief examiners—Appointment—Compensation.
- 31-603. Annual substitute teachers—Appointment, qualification, and assignment—Pay deductions from absent teachers—Other substitutes.
- 31-604. Temporary teachers—Appointment—Term of service—Salary assignments.
- 31-605. Community center, Americanization schools, and certain other activities authorized.
- 31-606. Estimates to conform to classifications.
- 31-607. Leave of absence—Duration—Effect on salary.
- 31-608. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.
- 31-609. Salaries—How paid.
- 31-610. Salaries of teachers, school officers, and employees.
- 31-611. Purpose of sections 31-611 to 31-615.
- 31-612. Salaries of teachers and principals of trade or vocational schools.
- 31-613. Board of Education to classify and assign teachers and principals in trade or vocational schools.
- 31-614. Board of Education authorized to establish occupational schools, trade or vocational courses.
- 31-615. Appointments, assignments, and transfers under sections 31-611 to 31-615.
- 31-616. Salaries of public school librarians.

#### CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

- 31-617. Board of Education to assign teachers, officers, and employees to salary classes—Assignment of director of intermediate instruction and supervisor of manual training—Director and assistant director of penmanship abolished—Transfer without examination.
- 31-618. Assignment to salary classes—Probationary periods—First longevity increase.
- 31-619. Salary of teachers on probationary tenure.
- 31-620. Appointment and promotion of teachers in junior high schools.
- 31-621. Assignment of teachers and employees in service on July 1, 1924.
- 31-622. Board of Education authorized to appoint retired army officer as professor of military science and tactics—Salary.

#### Sec.

- 31-623. Appointment, classification, and assignment of research assistants.
- 31-624. Appointment of instructor in automobile driving at Abbott Vocational School—Salary.
- 31-625. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

#### METHOD OF PROMOTION OF EMPLOYEES

- 31-626. Increase in salaries without action of board.
- 31-627. Salaries upon promotion—How computed.
- 31-628. Assignment of teachers in service on July 1, 1924, not otherwise provided for—Assignment of new teachers—Promotion without examination—Restrictions on promotions to Groups B and D—Division of salaries between teachers in white and colored schools.
- 31-629. Basis for promotions to teaching and administrative principals.
- 31-630. Rules for division of time and computation of pay for services.
- 31-631. Double salaries—School teachers and employees in District of Columbia.

#### SABBATICAL YEAR

- 31-632. Granting of leave authorized—Limitation on number.
- 31-633. Report of person on leave—Termination of leave.
- 31-634. Teacher's salary while on leave.
- 31-635. Administrative officers—Salary while on leave—Temporary employees.
- 31-636. Inclusion of sabbatical year for promotion and retirement purposes.
- 31-637. Masculine pronoun construed to include female employees.

§ 31-601 [7: 42]. Board of examiners—Constitution—Designation of members.

Boards of examiners for carrying out the provisions of the statutes with reference to examinations of teachers shall consist of the superintendent of schools and not less than four nor more than six members of the supervisory or teaching staff of the white schools for the white schools, and of the superintendent of schools and not less than four nor more than six members of the supervisory or teaching staff of the colored schools for the colored schools. The designations of members of the supervisory or teaching staff for membership on these boards shall be made annually by the Board of Education on the recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 13.)

#### AMENDMENT

Prior to the 1924 amendment, this section provided that the board of examiners should consist of the superintendent and two heads of departments of the white schools for white teachers and two heads of departments of colored schools for colored teachers, such heads of departments to be designated annually by the board of education.

#### CROSS REFERENCES

Appointment of officers, superintendent, teachers, directors, and assistants, title 31, ch. 1.

Appointment, promotion, transfer, or dismissal of teachers or directors, recommendation of superintendent of schools, § 31-102.

Classification and assignment of employee, § 31-617 et seq.

Necessity for examination, § 31-114.

Promotion of employees, § 31-626 et seq.

§ 31-602 [7: 43]. Chief examiners — Appointment — Compensation.

There shall be appointed by the Board of Education, on the recommendation of the superintendent of schools, a chief examiner for the board of exam-



iners for white schools: *Provided*, That an assistant superintendent in the colored schools shall be designated by the superintendent of schools as chief examiner for the board of examiners for the colored schools: *Provided further*, That, except as herein otherwise provided, all members of the respective boards of examiners shall serve without additional compensation. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 14.)

## AMENDMENT

Although the 1924 act purports to amend the act of 1906, no provisions similar to this section were contained in the earlier act.

## CROSS REFERENCE

See notes to § 31-601.

§ 31-603 [7: 44]. Annual substitute teachers—Appointment, qualification, and assignment—Pay deductions from absent teachers—Other substitutes.

The Board of Education, on recommendation of the superintendent of schools, is hereby authorized to appoint annual substitute teachers, who shall qualify for said positions by meeting such eligibility requirements as the said board may prescribe and who shall be assigned to the lowest class to which eligible for the type of work to be performed, but who shall not be entitled to the longevity allowance of said class: *Provided*, That the said board shall prescribe the amount to be deducted from the salary of any absent teacher for whom an annual substitute may perform service, and the amount so deducted shall revert to the Treasury of the United States in the same proportion as appropriations are made during the fiscal year for such absence and substitute service: *Provided further*, That the above authorization for the appointment of annual substitute teachers shall not be construed to prevent the Board of Education from the employment of other substitute teachers under regulations to be prescribed by the said board. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 374, ch. 250, § 15.)

## AMENDMENT

Although the 1924 act purports to amend the act of 1906, no provisions similar to this section appear in the earlier act.

## CROSS REFERENCE

See notes to § 31-601.

§ 31-604 [7: 45]. Temporary teachers—Appointment—Term of service—Salary assignments.

When necessary the Board of Education, on recommendation of the superintendent of schools, is authorized and empowered to appoint temporary teachers: *Provided*, That such appointments shall be made for a limited period not to exceed three months, which may be extended from time to time, in periods not to exceed three months each, in the discretion of the said board: *Provided further*, That such temporary teachers shall be assigned to the basic salary of the class in which service is to be performed and shall not be entitled to longevity allowance in said class. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 375, ch. 250, § 16.)

## AMENDMENT

Although the 1924 act purports to amend the 1906 act, no provisions similar to this section are found in the earlier act.

## CROSS REFERENCE

See notes to § 31-601.

§ 31-605 [7: 46]. Community center, Americanization schools, and certain other activities authorized.

The Board of Education is hereby authorized to conduct as a part of the public-school system a community center department, a department of school attendance and work permits, night schools, vacation schools, Americanization schools, and other activities, under and within appropriations made by Congress, and in consultation with the superintendent of schools to fix and prescribe the salaries, other than those herein specified, to be paid to the employees of the said activities. (June 20, 1906, 34 Stat. 320, ch. 3446, § 8; June 4, 1924, 43 Stat. 375, ch. 250, § 17.)

## AMENDMENT

Although the act of 1924 purports to amend the 1906 act, no provision similar to this section appears in the earlier act.

## CROSS REFERENCE

See notes to § 31-601.

§ 31-606 [7: 47]. Estimates to conform to classifications.

The estimates of the expenditures for the operation of the public-school system of the District of Columbia shall be prepared in conformity with the classification and compensation of educational employees provided in this chapter. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 375, ch. 250, § 18.)

## AMENDMENT

The 1924 amendment provided that estimates should be in conformity with the classification and compensation of educational employees provided for therein, while the 1906 act only provided for an estimate to be made and transmitted to the commissioners.

## CROSS REFERENCES

Apportionment of funds between white and colored schools, § 31-1112.

General provision for estimate of annual expenses, § 31-104.

§ 31-607 [7: 48]. Leave of absence—Duration—Effect on salary.

Leave of absence of any regularly employed teacher shall not exceed thirty calendar days in any one school year, and for this period such teacher who may be absent shall be paid, in case the absence is due to personal illness, death in family, or quarantine on account of contagious disease, the salary of the position, less the amount paid to the substitute teacher, and any absence in excess of said thirty days or absence for cause other than herein specified shall be without compensation: *Provided further*, That all other employees of the Board of Education may, in the discretion of said board, be granted not exceeding thirty days' leave of absence with pay in any one calendar year, and in the event of the absence of any janitor, assistant janitor, engineer, assistant engineer, or caretaker, at any time during school sessions the Board of Education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1911, 36 Stat. 1395, ch. 285.)



§ 31-608 [7: 49]. No discrimination in salary because of sex—Deductions affecting salaries—Teacher not to be employed as clerk or librarian.

In assigning salaries to teachers no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian. (Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1.)

§ 31-609 [7: 50]. Salaries—How paid.

The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June: *Provided*, That the salaries of other teachers shall begin when they enter upon their duties. The Board of Education is authorized to designate the months in which the ten salary payments now required by law shall be made to teachers assigned to instruction in nature study and school gardening, and in health, physical education, and playground activities. (May 26, 1903, 35 Stat. 291, ch. 198; May 21, 1928, 45 Stat. 645, ch. 659, § 1; Feb. 25, 1929, 45 Stat. 1279, ch. 314, § 1; June 29, 1932, 47 Stat. 360, ch. 308, § 1; June 16, 1933, 48 Stat. 236, ch. 93, § 1; Apr. 4, 1938, 52 Stat. 170, ch. 62, § 1; July 15, 1939, 53 Stat. 1017, ch. 281, § 1; June 12, 1940, 54 Stat. —, ch. 333, § 1.)

#### AMENDMENT

This section is a composite of the credits cited in the history line.

§ 31-610 [7: 31]. Salaries of teachers, school officers, and employees.

The salaries of teachers, school officers, and other employees of the Board of Education of the District of Columbia shall be as follows:

### SALARIES OF TEACHERS AND SCHOOL LIBRARIANS

#### CLASS 1.—TEACHERS IN KINDERGARTENS AND ELEMENTARY SCHOOLS

*Group A.*—A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,200 per year is reached.

*Group B.*—A basic salary of \$2,300 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,600 per year is reached.

#### CLASS 2.—TEACHERS IN JUNIOR HIGH SCHOOLS

*Group A.*—A basic salary of \$1,600 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,400 per year is reached.

*Group B.*—A basic salary of \$2,500 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,800 per year is reached.

*Group C.*—A basic salary of \$1,800 per year, with an annual increase in salary of \$100 for ten years, or until a maximum salary of \$2,800 per year is reached.

*Group D.*—A basic salary of \$2,900 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,200 per year is reached.

#### CLASS 3.—TEACHERS IN SENIOR HIGH AND NORMAL SCHOOLS

*Group A.*—A basic salary of \$1,800 per year, with an annual increase in salary of \$100 for ten years, or until a maximum salary of \$2,800 per year is reached.

*Group B.*—A basic salary of \$2,900 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,200 per year is reached.

#### CLASS 4.—SCHOOL LIBRARIANS

*Group A.*—A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,200 per year is reached.

*Group B.*—A basic salary of \$2,300 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,600 per year is reached.

### SALARIES OF ADMINISTRATIVE AND SUPERVISORY OFFICERS

#### CLASS 5.—TEACHING PRINCIPALS WITH FROM FOUR TO SEVEN ROOMS—PRINCIPALS OF ELEMENTARY SCHOOLS

A basic salary of \$2,300 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,600 per year is reached.

#### CLASS 6.—TEACHING PRINCIPALS WITH FROM EIGHT TO FIFTEEN ROOMS

A basic salary of \$2,500 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,800 per year is reached.

#### CLASS 7.—ADMINISTRATIVE PRINCIPALS WITH SIXTEEN ROOMS OR MORE, AND PRINCIPALS OF VOCATIONAL AND AMERICANIZATION SCHOOLS

A basic salary of \$2,900 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,200 per year is reached.

#### CLASS 8.—PRINCIPALS OF JUNIOR HIGH SCHOOLS

A basic salary of \$3,500 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$4,000 per year is reached.

#### CLASS 9.—PRINCIPALS OF SENIOR HIGH AND NORMAL SCHOOLS

A basic salary of \$4,000 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$4,500 per year is reached.



**CLASS 10.—DIRECTORS OF SPECIAL SUBJECTS AND DEPARTMENTS**

A basic salary of \$3,200 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,500 per year is reached.

**CLASS 11.—HEADS OF DEPARTMENTS AND ASSISTANT PRINCIPALS**

A basic salary of \$3,200 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$3,700 per year is reached.

**CLASS 12.—SUPERVISING PRINCIPALS**

A basic salary of \$4,000 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$4,500 per year is reached.

**COMMUNITY CENTER DEPARTMENT****A. DIRECTOR**

A basic salary of \$3,200 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,500 per year is reached.

**B. GENERAL SECRETARIES**

A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,200 per year is reached.

**C. COMMUNITY SECRETARIES**

A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$1,700 per year is reached.

**DEPARTMENT OF SCHOOL ATTENDANCE AND WORK PERMITS****A. DIRECTOR**

A basic salary of \$3,200 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,500 per year is reached.

**B. CHIEF ATTENDANCE OFFICERS**

A basic salary of \$2,100 per year, with an annual increase in salary of \$100 for four years, or until a maximum salary of \$2,500 per year is reached.

**C. ATTENDANCE OFFICERS**

A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for six years, or until a maximum salary of \$2,000 per year is reached.

**D. CENSUS INSPECTORS**

A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for six years, or until a maximum salary of \$2,000 per year is reached.

**BOARD OF EXAMINERS****CHIEF EXAMINER**

A basic salary of \$4,000 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$4,500 per year is reached. (June 20, 1906, 34 Stat. 318, 320, 321, ch. 3446, §§ 4, 8, 9; June 4, 1924, 43 Stat. 367, ch. 250, § 1; Feb. 28, 1929, 45 Stat. 1343, ch. 357, § 1.)

**AMENDMENT**

This section is a composite of credits cited in the history line.

**CROSS REFERENCES**

Classification of teachers, § 31-617, and notes.

Other provisions concerning salaries, § 31-612.

Teachers excluded from unemployment compensation under Social Security Act, § 46-301.

**NOTES TO DECISIONS****COMPUTATION OF SALARIES**

Computation of school teacher's salary under this and other compensation statutes. *District of Columbia v. Newman* (59 App. D. C. 163, 37 Fed. (2d) 444).

§ 31-611 [7: 31a]. Purpose of sections 31-611 to 31-615.

It is the purpose of sections 31-611 to 31-615 to raise the trade or vocational schools from the present elementary school level to the rank of junior high schools as to salary schedule; and to provide other necessary legislation relating thereto. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 1.)

**CROSS REFERENCE**

Classification and assignment of teachers, § 31-617, and notes.

§ 31-612 [7: 31b]. Salaries of teachers and principals of trade or vocational schools.

The salaries of teachers and principals of the trade or vocational schools shall be as follows:

**CLASS 1.—TEACHERS**

*Group A.*—A basic salary of \$1,400 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,200 per year is reached.

*Group B.*—A basic salary of \$2,300 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,600 per year is reached.

**CLASS 2.—TEACHERS**

*Group A.*—A basic salary of \$1,600 per year, with an annual increase in salary of \$100 for eight years, or until a maximum salary of \$2,400 per year is reached.

*Group B.*—A basic salary of \$2,500 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$2,800 per year is reached.

*Group C.*—A basic salary of \$1,800 per year, with an annual increase in salary of \$100 for ten years, or until a maximum salary of \$2,800 per year is reached.

*Group D.*—A basic salary of \$2,900 per year, with an annual increase in salary of \$100 for three years, or until a maximum salary of \$3,200 per year is reached.

**CLASS 8.—PRINCIPALS**

A basic salary of \$3,500 per year, with an annual increase in salary of \$100 for five years, or until a maximum salary of \$4,000 per year is reached. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 2.)

**CROSS REFERENCE**

Other provisions concerning salaries, § 31-610.

§ 31-613 [7: 31c]. Board of Education to classify and assign teachers and principals in trade or vocational schools.

The Board of Education is hereby authorized, empowered, and directed to classify and assign the teachers and principals in the service in trade or vocational schools on July 1, 1936, to the salary classes and positions in the foregoing salary schedule for said trade or vocational schools, in accordance with



such rules as the Board of Education may prescribe. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 3.)

## CROSS REFERENCE

Classification and assignment of teachers, § 31-617 and notes.

§ 31-614 [7: 31d]. Board of Education authorized to establish occupational schools, trade or vocational courses.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational schools; and also to carry on trade or vocational courses on the senior high school level or in senior high schools. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4.)

## CROSS REFERENCE

Classification and assignment of teachers, § 31-617.

§ 31-615 [7: 31e]. Appointments, assignments, and transfers under sections 31-611 to 31-615.

The appointments, assignments, and transfers of teachers and principals authorized in sections 31-611 to 31-615 shall be made in accordance with sections 31-101 to 31-118, 31-601 to 31-605, 31-610 to 31-629, 31-1101, 31-1104 and 31-1109. (Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 5.)

## CROSS REFERENCE

Classification and assignment of teachers, § 31-617.

§ 31-616 [7: 31f]. Salaries of public school librarians.

The average of the salaries paid librarians in the public schools shall not exceed the average of the salaries paid employees performing the same grade of work in the Free Public Library. (July 15, 1939, 53 Stat. 1014, ch. 281, § 1; June 12, 1940, 54 Stat. —, ch. 333, § 1.)

## CROSS REFERENCE

Classification and assignment of teachers, § 31-617 and notes.

CLASSIFICATION AND ASSIGNMENT OF  
EMPLOYEES

§ 31-617 [7: 32]. Board of Education to assign teachers, officers, and employees to salary classes—Assignment of director of intermediate instruction and supervisor of manual training—Director and assistant director of penmanship abolished—Transfer without examination.

The Board of Education is hereby authorized, empowered, and directed, on recommendation of the superintendent of schools, to classify and assign all teachers, school officers, and other employees to the salary classes and positions in the foregoing salary schedule: *Provided*, That said board is authorized during the tenure of office of the director of intermediate instruction and the supervisor of manual training in service on July 1, 1924, to assign said director and said supervisor to salary class 12: *Provided further*, That the said board is authorized to abolish the titles of director and assistant director of penmanship, and to transfer said employees to salary class 3, Group B, of the foregoing salary schedule with the title of teacher in the normal school and director of penmanship in the elementary schools and junior high schools, without further examination or qualification on their part. (June 20,

1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 2.)

## COMPILER'S NOTE

Sections 31-617, 31-619, and 31-621 are largely temporary and probably executed.

## AMENDMENT

The 1906 Act, after setting out a schedule of salaries, provided: "That the board of education shall arrange all teachers in the classes and groups in the above schedule," with certain exceptions.

## CROSS REFERENCES

Classification of subjects in certain schools, § 31-112.  
Director of intermediate instruction, § 31-110.  
Duty to furnish teachers for colored children, § 31-1113.  
General provisions concerning teachers, officers, and employees, § 31-101 et seq.  
Supervisor of manual training, § 31-111.

## NOTES TO DECISIONS

## EQUALITY OF TEACHERS

This section was intended to place upon a basis of approximate equality with local teachers all teachers who had been brought into the service from other jurisdictions and all who might thereafter be so brought into it. *Distriet of Columbia v. Newman* (59 App. D. C. 163, 37 Fed. (2d) 444).

§ 31-618 [7: 33]. Assignment to salary classes—Probationary periods—First longevity increase.

The Board of Education, on recommendation of the superintendent of schools, is authorized, empowered, and directed to assign, at the time of appointment, teachers, school officers, or other employees appointed after July 1, 1924, to the salary classes and positions in the foregoing salary schedule in accordance with previous experience, eligibility qualifications possessed, and the character of the duties to be performed by such persons: *Provided*, That the first year of service of any newly-appointed teacher, school officer, or other employees shall be probationary: *And provided further*, That such teacher, school officer, or other employee shall receive his first longevity increase on the date of his permanent appointment. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 370, ch. 250, § 3.)

## AMENDMENT

Act of 1906 vested control of public schools in Board of Education.

§ 31-619 [7: 34]. Salary of teachers on probationary tenure.

Every teacher, school officer, or other employee in the service of the Board of Education on probationary tenure on June 30, 1924, shall receive the minimum salary of his salary class or position in the foregoing schedule during the remainder of his year of probation, and shall receive his first longevity increase on the date of his permanent appointment: *Provided*, That for the fiscal year ending June 30, 1925, and thereafter, said probationary teachers, and other employees in classes 1, 2, 3, and 4 shall be entitled to longevity placement as provided in section 31-621. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 371, ch. 250, § 5.)

## AMENDMENT

Act of 1906 vested control of public schools in Board of Education and provided for appointment of special beginning teachers for a two years' probationary period.



§ 31-620 [7: 34a]. Appointment and promotion of teachers in junior high schools.

The Board of Education is authorized to establish the eligibility requirements and prescribe such methods of appointment or promotion for teachers in the junior high schools as it may deem proper, subject to provisions of law covering such matters now in effect or which may be enacted after February 28, 1929. (Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 2.)

#### NOTES TO DECISIONS

##### CHANGE OF RULES

Board of education had the legal power to change the eligibility rules from time to time as it thought wise and proper. *United States ex rel. Corbin v. Doyle* (68 App. D. C. 100, 93 Fed. (2d) 646).

##### QUALIFICATIONS

Possession of a degree is not sufficient, and the board may rightly require an examination to establish eligibility for position as teacher in junior high school. *United States ex rel. Gillem v. Carusi* (59 App. D. C. 46, 32 Fed. (2d) 942).

##### REGULATIONS

Regulations of board of education concerning appointment and promotion of teachers have force and effect of law. *United States ex rel. Denney v. Callahan* (54 App. D. C. 61, 294 Fed. 992).

§ 31-621 [7: 35]. Assignment of teachers and employees in service on July 1, 1924.

Teachers, school officers, and other employees in the service of the Board of Education on July 1, 1924, shall be placed in the salary classes and positions of the foregoing schedule as follows:

(a) From kindergarten assistants, class 1; kindergarten principals, class 3; model teachers of kindergartens, class 4; teachers of first and second grades, class 2; teachers of third and fourth grades, class 3; teachers of fifth, sixth, and seventh grades, class 4; teachers of eighth grades, class 5; model teachers of first and second grades, class 4; teachers of manual training, drawing, physical culture, music, domestic science, and domestic art in graded schools, classes 3 and 4; assistants to the directors of primary instruction, classes 4 and 5; vocational trade instructors, class 5; and teachers of Americanization work, class 5, under the Act of June 20, 1906, as amended, to class 1, Group A, of the foregoing schedule.

(b) From head teachers and teachers of normal, high, and manual training high schools, class 6, Group A; and teachers of manual training, drawing, physical culture, music, domestic science, and domestic art in the normal, high, and manual training high schools, class 6, Group A, under the Act of June 20, 1906, as amended, to class 3, Group A, of the foregoing schedule, except as herein otherwise provided.

(c) From teachers of normal, high, and manual-training high schools, promoted for superior work, class 6, Group B, under the Act of June 20, 1906, as amended, to class 3, Group B, of the foregoing schedule.

(d) From teachers in junior high schools, possessing the eligibility requirements of teachers of elementary schools, classes 3, 4, and 5, under the Act of June 20, 1906, as amended, to class 2, Group A, of the foregoing schedule.

(e) From teachers in junior high schools possessing the eligibility requirements of teachers of senior high schools, class 6, Group A, under the Act of June 20, 1906, as amended, to class 2, Group C, of the foregoing schedule.

(f) From librarians, class 5, under the Act of June 20, 1906, as amended, to class 4, Group A, of the foregoing schedule.

(g) From teaching principals with from four to seven rooms, classes 2, 3, 4, and 5, under the Act of June 20, 1906, as amended, to class 5 of the foregoing schedule.

(h) From teaching principals with from eight to thirteen rooms, classes 2, 3, 4, and 5, under the Act of June 20, 1906, as amended, to class 6 of the foregoing schedule.

(i) From administrative principals with sixteen or more rooms, class 5; principals of grade manual-training schools, class 6, Group A; and principal of Americanization work under the Act of June 20, 1906, as amended, to class 7 of the foregoing schedule.

(j) From principals of junior high schools under the Act of June 20, 1906, as amended, to class 8 of the foregoing schedule.

(k) From principals of senior high and normal schools under the Act of June 20, 1906, as amended, to class 9 of the foregoing schedule.

(l) From directors of drawing, physical culture, music, domestic science, domestic art, kindergartens, and primary instruction; assistant directors of drawing, physical culture, music, domestic science, domestic art, kindergartens, and primary instruction; and assistant supervisor of manual training under the Act of June 20, 1906, as amended, to class 10 of the foregoing schedule.

(m) From director of intermediate instruction and supervisor of manual training under the Act of June 20, 1906, as amended, to class 10 of the foregoing schedule, subject to the provisions of section 31-617.

(n) From director of penmanship and assistant director of penmanship under the Act of June 20, 1906, as amended, to class 3, Group B, of the foregoing schedule, as provided in section 31-617.

(o) From heads of departments in high and manual training high schools, class 6, Group B; assistant principals; and assistant principals (deans of girls) under the Act of June 20, 1906, as amended, to class 11 of the foregoing schedule.

(p) From supervising principals under the Act of June 20, 1906, as amended, to class 12 of the foregoing schedule.

(q) From teachers not otherwise provided for, classes 1, 2, 3, and 4 under the Act of June 20, 1906, as amended, to class 1, Group A, class 2, Group A or Group C, or class 3, Group A, of the foregoing schedule in accordance with the eligibility qualifications possessed and the character of duties to be performed by such teachers: *Provided*, That all teachers, school officers, and other employees in the service of the Board of Education on July 1, 1924, not specifically mentioned in the provisions of this section shall be placed in the salary classes and positions in the foregoing schedule in accordance with the eligibility qualifications possessed and the character of duties to be performed by such teachers, school



officers, and other employees: *Provided further*, That all teachers, school officers, or other employees appointed after July 1, 1924, shall be placed in the salary classes and positions in the foregoing schedule by the said board, and all teachers and other employees assigned to classes 1, 2, 3, and 4 of the foregoing schedule in the service of the said board on July 1, 1924, or thereafter appointed shall receive their longevity increase according to their previous number of years of experience in teaching in like positions in accredited schools to those which they held on July 1, 1924, or to which they may thereafter be appointed: *Provided further*, That in crediting experience in teaching of any person who has been absent from his duties as a teacher because of military service the said board is hereby authorized to include naval, military, or other service with the armed forces of the United States Government or its allies as the equivalent of teaching experience: *Provided further*, That no teacher or other employee shall be placed in the salary schedule for more than the fourth year of experience in classes 1, 2, Group A, or 4, or more than the fifth year of experience in class 2, Group C, or class 3: *Provided further*, That in the case of trade teachers in regularly organized trade schools the Board of Education is authorized to credit approved experience in the trades in the same manner and to the same extent as though it were experience in teaching. (June 20, 1906, 34 Stat. 318, ch. 3446, § 4; June 4, 1924, 43 Stat. 372, ch. 250, § 6; Feb. 28, 1929, 45 Stat. 1344, ch. 357, § 4.)

#### AMENDMENT

Although the 1924 purports to amend the 1906 act, this section is supplementary rather than amendatory.

The 1929 amendment added the final proviso in paragraph (q).

§ 31-622 [7: 35a]. Board of Education authorized to appoint retired Army officer as professor of military science and tactics—Salary.

Notwithstanding any other provision of law, one retired officer of the United States Army, acting as professor of military science and tactics at the public high schools of Washington, District of Columbia, shall be permitted to receive, in addition to his retired pay, the pay of a teacher in the public high schools of Washington, District of Columbia, not to exceed \$1,800 per annum, under appointment by the Board of Education of the District of Columbia and payable from the appropriation for the expenses of the public schools of the District of Columbia. (June 4, 1935, 49 Stat. 320, ch. 167.)

§ 31-623 [7: 35b]. Appointment, classification, and assignment of research assistants.

(a) The Board of Education is hereby authorized to appoint research assistants who shall qualify for said positions by meeting such eligibility requirements as the said Board may prescribe and who shall on appointment be assigned to salary class 2 of article I of the Teachers' Salary Act, approved June 4, 1924, in accordance with the professional qualifications which they possess at the time of appointment.

(b) Research assistants shall be appointed to either group A or group C of said salary class 2 in accord-

ance with the eligibility qualifications possessed and the character of duties to be performed by such research assistants.

(c) Research assistants shall be promoted to group B or group D of said salary class 2 on the basis of such evidence of superior work and increased professional attainments as the Board of Education may prescribe.

(d) Research assistants shall be classified as teachers for pay-roll purposes and for retirement purposes.

(e) Appointments, assignments, and transfers authorized in this section shall be made in accordance with this title. (Apr. 5, 1939, 53 Stat. 568, ch. 39, §§ 1-5.)

#### COMPILER'S NOTE

In salary class 2 of article I of the Teachers' Salary Act, approved June 4, 1924, referred to in subsection (a) above, see § 31-610.

§ 31-624 [7: 35c]. Appointment of instructor in automobile driving at Abbott Vocational School—Salary.

The Board of Education is hereby authorized to appoint a teacher, class 2-A, for instruction in automobile driving at the Abbott Vocational School at a beginning salary of \$2,000. (July 15, 1939, 53 Stat. 1014, ch. 281, § 1; June 12, 1940, 54 Stat. —, ch. 333, § 1.)

§ 31-625 [7: 53]. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker—Salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school sessions the board of education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee. (Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1.)

#### METHOD OF PROMOTION OF EMPLOYEES

§ 31-626 [7: 36]. Increase in salaries without action of board.

On the first day of each fiscal year, if his work is satisfactory, every permanent teacher, school officer, or other employee shall receive an annual increase in salary within his salary class or position as provided in section 31-621 without action of the Board of Education. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 7.)

#### AMENDMENT

The 1906 Act provided as follows: "After June 30, 1907, if his work is satisfactory he (each head of department and teacher) shall receive an annual increase within his class or group, as herein provided, without action by the board of education."

§ 31-627 [7: 37]. Salaries upon promotion—How computed.

Teachers, school officers, and other employees promoted from a lower to a higher salary class or position shall receive a salary in the salary class or position to which promoted which is next above the salary in the salary class or position from which promoted.



(June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 8.)

#### AMENDMENT

The 1906 act provided as follows: "If promoted to a higher class he (head of department or teacher) shall receive the salary in that class next above his present salary."

§ 31-628 [7: 38]. Assignment of teachers in service on July 1, 1924, not otherwise provided for—Assignment of new teachers—Promotion without examination—Restrictions on promotions to Groups B and D—Division of salaries between teachers in white and colored schools.

Every teacher in the service on July 1, 1924, except as herein otherwise provided, and every teacher thereafter appointed, shall be assigned to Group A of the class to which eligible or to Group C of class 2 and shall be promoted to Group D of class 2 or Group B of any class on the basis of such evidence of superior teaching and of increased professional attainments as the Board of Education may prescribe: *Provided*, That teachers receiving salaries in Group B of class 6, on June 30, 1924, and teachers receiving salaries in Group A of class 6 who on June 30, 1924, are on the eligible list for promotion to Group B of class 6, shall be assigned to Group B of class 3 on July 1, 1924, without further examination or additional qualifications: *Provided further*, That no person who has not received for at least one year the maximum salary of Group A in any class or Group C of class 2 shall be eligible for promotion to Group B of any class or Group D of class 2: *And provided further*, That the number of Group B and Group D salaries shall be divided proportionately between the teachers in the white schools and the teachers in the colored schools on the basis of the enrolment of pupils in the respective white and colored schools. (June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 4, 1924, 43 Stat. 373, ch. 250, § 9; Apr. 5, 1939, 53 Stat. 571, ch. 43.)

#### AMENDMENTS

Although the 1924 act purported to amend the act of 1906, this section applies only to teachers in the service on July 1, 1924.

The 1939 amendment omitted the words "in any salary class" after the words "Group D salaries" in the last proviso.

#### CROSS REFERENCES

Apportionment of funds between white and colored schools, § 31-1112.

Duty to furnish teachers for colored children, § 31-1113.

§ 31-629 [7: 39]. Basis for promotions to teaching and administrative principals.

Teachers shall be promoted to be teaching principals, or to be administrative principals, on the basis of such evidence of superior teaching, of administrative ability and of increased professional attainments as the Board of Education may prescribe. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; June 4, 1924, 43 Stat. 374, ch. 250, § 10.)

#### AMENDMENT

Although the 1924 act purports to amend the 1906 act, provisions similar to this section do not appear in the earlier act.

§ 31-630 [7: 51]. Rules for division of time and computation of pay for services.

The following rules for division of time and computation of pay for services rendered are hereby established: Compensations of all teachers and librarians and clerks in the high and manual-training schools shall be divided into ten equal instalments, one of which shall be paid for each school month, and in making payments for a fractional part of a month one-thirtieth of one of such instalments shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with the compensation of all teachers and librarians and clerks in the high and manual-training schools, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the 31st day of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the schools during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of said month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to the date of entry: *Provided*, That for one day's unauthorized absence on the 31st day of any calendar month one day's pay shall be forfeited. (May 26, 1908, 35 Stat. 291, ch. 198.)

§ 31-631 [7: 52]. Double salaries—School teachers and employees in District of Columbia.

Section 6, of the Act of Congress approved May 10, 1916 (39 Stat. 120, ch. 117), providing that unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum, shall not apply to teachers of the public schools of the District of Columbia when employed by any of the executive departments or independent establishments of the United States government; nor to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocational schools; nor to employees of the school garden department of the public schools of the District of Columbia; nor to employees of the community center department of the public schools of the District of Columbia. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1.)

#### AMENDMENT

This section is a composite of credits cited in the history line.

#### SABBATICAL YEAR

§ 31-632. Granting of leave authorized—Limitation on number.

The Board of Education, on recommendation of the superintendent of schools, may grant leave of absence with part pay to any employee of said Board of



Education whose salary is fixed in sections 31-610, 31-612, who has served in the public schools of the District of Columbia not less than six years continuously prior to filing application for leave, for purposes of educational improvement for a period not exceeding one year at a time, under conditions not herein otherwise specified as the Board of Education may determine, and the place of said person to be filled by the appointment of a qualified temporary employee for the period of said leave: *Provided*, That not more than 2 per centum of the total number of the above-mentioned employees may be on leave with part pay at the same time. (June 12, 1940, 54 Stat. —, ch. 342, § 1.)

**§ 31-633. Report of person on leave—Termination of leave.**

Any employee to whom such leave of absence may be granted shall report in writing to the superintendent, in such form as the Board of Education may determine, the manner in which said leave of absence is being employed, and for failure to comply with any requirement of the rules of the Board of Education or to pursue in a satisfactory manner the purpose for which said leave of absence was granted, the Board of Education, on recommendation of the superintendent, may terminate such leave of absence at any time. (June 12, 1940, 54 Stat. —, ch. 342, § 2.)

**§ 31-634. Teacher's salary while on leave.**

Any teacher whose salary is fixed in section 31-610, classes 1 to 4, and § 31-612, who is granted leave of absence for educational purposes under the provisions of sections 31-632 to 31-637, shall receive compensation during the period of said leave, paid in the same manner as though on active duty, equal to the difference between the salary which the teacher would have received during the year he is on said leave of absence and the basic annual salary of group A or group C of his salary class, less the amount of his contribution to the retirement fund, in accordance with the provisions of sections 31-701 to 31-720. (June 12, 1940, 54 Stat. —, ch. 342, § 3.)

**§ 31-635. Administrative officers—Salary while on leave—Temporary employees.**

Any administrative or supervisory officer mentioned in section 31-632 whose salary is fixed in section 31-610, classes 5 to 12, who is granted leave of absence for educational purposes under the provisions of sections 31-632 to 31-637, shall receive compensation during the period of said leave, paid in the manner as though on active duty, equal to the largest amount to which any teacher in the group B or group D salary class under his supervision would be entitled if given such education leave, less the amount of his contribution to the retirement fund in accordance with the provisions of sections 31-701 to 31-720: *Provided*, That during the period of the leave of said officer, the Board of Education on the recommendation of the superintendent of schools may authorize the temporary assignment to his position of any teacher or officer who serves under said officer on leave: *And provided further*, That the position of the teacher or officer so assigned may be filled during

the period of such absence by a qualified temporary employee. (June 12, 1940, 54 Stat. —, ch. 342, § 4.)

**§ 31-636. Inclusion of sabbatical year for promotion and retirement purposes.**

The teacher or officer who takes leave of absence with part pay for educational purposes under the provisions of sections 31-632 to 31-637 shall be construed as in active service, and periods of service for salary increment purposes and for retirement purposes, and the pay which the teacher or officer would have received had leave not been taken shall be used in computing retirement annuities. (June 12, 1940, 54 Stat. —, ch. 342, § 5.)

**§ 31-637. Masculine pronoun construed to include female employees.**

Wherever the masculine pronoun occurs in sections 31-632 to 31-637 it shall be construed to mean both male and female employees. (June 12, 1940, 54 Stat. —, ch. 342, § 6.)

**EFFECTIVE DATE**

Section 7 of the act of June 12, 1940, ch. 342, provided that the act should take effect on and after July 1, 1940.

**Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS**

**Sec.**

- 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.
- 31-702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.
- 31-703. Retirement age—Continuous-employment requirements.
- 31-704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.
- 31-705. Annuity allowance.
- 31-706. Minimum-service credit in cases of disability retirement.
- 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.
- 31-708. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Installment deposits allowed.
- 31-709. Refund on leaving service—Reinstatement.
- 31-710. Payments upon death of teacher—Beneficiary.
- 31-711. Precedence of payments upon death of teacher.
- 31-712. Continuance in service deemed consent to deductions.
- 31-713. Retirement provisions not to prevent discharge of teachers.
- 31-714. Definitions—"Teacher"—"Annual salary"—"His."
- 31-715. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.
- 31-716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.
- 31-717. Commissioners of the District of Columbia to make rules and regulations, and to carry this chapter into effect.
- 31-718. Funds not assignable, nor subject to execution or levy.
- 31-719. Chapter not applicable to teachers receiving annuity from a State or other municipality.
- 31-720. Application of act—Annuities under prior act.

**§ 31-701 [7: 61]. Deduction from pay to provide annuity—Basis of deductions—Certificate.**

There shall be deducted and withheld from the annual salary of every teacher in the public schools



of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this chapter, an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

The deductions herein provided for shall be based on such annuity table or tables as the commissioners of the District of Columbia shall direct: *Provided, however,* That said deductions shall in no case exceed 8 per centum of his annual salary: *And provided further,* That when the annual salary exceeds \$2,000 the deductions and benefits shall be made as on an annual salary of \$2,000.

The commissioners of the District of Columbia shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment deleted the words "since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service" following the words "annual salary received" in the first paragraph and inserted in lieu thereof the words now contained down to the words "payable monthly, etc."; substituted the commissioners of the District of Columbia for the Secretary of the Treasury; deleted immediately preceding the first proviso and following the word "direct," the words "and shall be varied yearly to correspond to any change in the basic salary of the teacher" and changed the figure \$1,500 to \$2,000 in the second proviso.

#### CROSS REFERENCE

Civil Service Retirement Act does not apply to teachers, § 1-217.

§ 31-702 [7: 62]. Deductions deposited in United States Treasury to credit of teacher—Income from investments.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4 per centum per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the auditor of the District of Columbia. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this chapter. (Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment inserted the phrase "which account shall be kept by the auditor of the District of Columbia" and also inserted "Treasurer of the United States" in lieu of "Secretary of the Treasury."

§ 31-703 [7: 63]. Retirement age—Continuous-employment requirements.

Any teacher who shall have reached the age of sixty-two may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of seventy shall be retired unless, in the judgment of two-thirds of the Board of Education, such teacher should be longer retained for the good of the service: *Provided,* That no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time of his attainment of the age of fifty-two years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

The 1926 Amendment added the proviso.

§ 31-704 [7: 64]. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.

Any teacher who shall have reached the age of forty-five, and who shall have been continuously employed in the public schools of the District of Columbia for not less than ten years immediately prior to his retirement, or who shall have been continuously employed for not less than fifteen years prior to his retirement and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated: *Provided,* That absence of any teacher on authorized leave of absence without pay for a period not in excess of two years shall not constitute a break in continuous employment: *Provided further,* That no teacher shall be retired by the Board of Education under the provisions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment deleted the words "or shall have taught continuously for fifteen years in the public schools of the District of Columbia" following the words "forty-five" and inserted in lieu thereof the words which now follow the said words "forty-five" down to and including the words "to his retirement"; and, added the provisos.

§ 31-705 [7: 65]. Annuity allowance.

Every teacher who shall be retired under the provisions of section 31-703 or section 31-704 shall receive during the remainder of his life a combined



annuity composed of (1) an annuity equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service after June 30, 1926; (2) a sum equal to 1 per centum of his average annual salary received during the ten years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and (3) an additional sum of \$15 for each year of said service, but in neither case to exceed forty years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment deleted the words "(1) a sum equal to 1 per centum of his average basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, and (2) an additional sum of \$10 for each year of said service, such annuity to be payable monthly and to cease and determine at his death" following the words "composed of" and inserted in lieu thereof the present words.

§ 31-706 [7: 66]. Minimum-service credit in cases of disability retirement.

In calculating, as provided in section 31-705, the third part of the annuity of a teacher retired under the provisions of section 31-704, a minimum credit of twenty years shall be used in determining the sum allowable to a teacher with less than twenty years of service. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

The 1920 act provided as follows: "That the annuity of a teacher retired under the provisions of section 3 (§ 31-703) hereof shall not be less than \$480, and the annuity of a teacher retired under section 4 (§ 31-704) hereof shall not be less than \$420."

§ 31-707 [7: 67]. Longevity payable from District revenues—Calculation of annual appropriations—Certification to budget bureau—Reserves held by treasurer of United States—Interest.

The second and third parts of the annuity provided for by section 31-705 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid. The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay-roll of all participants which shall be adequate to cover the liability normally accrued plus a further level percentage of the pay-roll computed to be sufficient to liquidate, within a period of approximately thirty years after July 1, 1926, the amount of the accrued liability as of that date. The amount of the necessary appropriations shall be certified each year by the commissioners of the District of Columbia to the Bureau of the Budget, and shall be transmitted by it to Congress.

The reserves created as the result of such annual appropriations shall be held by the treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at four per centum per annum, compounded annually. The fund thus

created shall be held and invested by the treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this chapter. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

#### AMENDMENT

Act of 1920 provided as follows: "The second part of the annuity provided for by section 5 hereof shall be paid by appropriations from the same fund as the current expenses of the District; and if the deductions from a teacher's salary with accumulated interest shall be insufficient to pay the first part of the annuity provided for, the deficiency shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid."

§ 31-708 [7: 68]. Credit for public-school service outside District of Columbia—Deposit to cover period of service beyond District—Instalment deposits allowed.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed ten years, for public-school service or its equivalent outside the District of Columbia: *Provided*, That no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District of Columbia, with interest thereon at 4 per centum per annum, compounded annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further*, That when the average annual salary of the class exceeds \$2,000 the contributions shall be based on a salary of \$2,000: *Provided further*, That if the teacher so elects he may deposit the required sum in the fund in any number of monthly instalments not exceeding one hundred, with interest at 4 per centum per annum, compounded annually: *And provided further*, That the provisions of this chapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment deleted the second, third, and fourth paragraphs of the section and added the provisos. The deleted paragraphs were as follows:

"No sum shall be paid to any teacher upon his retirement under the provisions of section 3 (§ 31-703) hereof unless he shall have been employed as a public-school teacher continuously in the District of Columbia from the time of his attainment of the age of fifty-two years.

"No sum shall be paid to any teacher upon his retirement under the provisions of section 4 (§ 31-704) hereof unless he shall have been employed continuously as a teacher in the public schools of the District of Columbia for ten years immediately prior to his retirement.

"When the average basic salary exceeds \$1,500, the first part of the annuity provided for in section 5 (§ 31-705) hereof shall be based on an average basic salary of \$1,500."



**§ 31-709 [7: 69]. Refund on leaving service—Reinstatement.**

Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under section 31-703 or section 31-704, he shall receive the amount of his deductions, together with the interest then credited thereon.

No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *Provided*, That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 4 per centum compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public-school system for more than five years. (Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

**AMENDMENT**

The 1926 amendment deleted in the first paragraph the words "prior to the age of sixty-two years, except for disability, as provided in section 4 (§ 31-704) hereof" and inserted in lieu thereof the words "except for retirement under section 3 (§ 31-703) or section 4 (§ 31-704)" and deleted the words "as provided in section 2 (§ 31-702) hereof" which followed the present last word of the first paragraph; in the second paragraph deleted the words "the benefits under section 6 (§ 31-706) unless he shall have served at least ten years after such reinstatement. In case of his reinstatement in the service of the public schools of the District of Columbia, the monthly deductions thereafter from his salary shall be computed as herein provided and from his age at the date of such reinstatement" which followed the words "be entitled to" and inserted in lieu thereof the words which now conclude the section.

**§ 31-710 [7: 70]. Payments upon death of teacher—Beneficiary.**

Every teacher from whose salary retirement deductions are made in accordance with this chapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1.)

**AMENDMENTS**

In the 1920 act, the second paragraph provided: "In case of the death of an annuitant before he shall have received annuity payments equal to the amount of his deductions, together with the interest credited thereon, as hereinbefore provided, the balance thereof remaining to his credit at the date of his death shall be paid to his legal representative."

The act of 1926 provided as follows: "In case of the death of a teacher while in the service the amount of his deductions, together with the interest then credited thereon, as provided in section 31-702, shall be paid to his legal representatives."

"In the case of the death of an annuitant no part of the deductions made from his salary, with the interest thereon to the credit of his account, shall be returned to his estate unless prior to his retirement he shall have selected, under the provisions of such rules and regulations as the commissioners of the District of Columbia shall prescribe, an annuity which shall carry with it a provision for the return of the unpaid principal or for

the continuance of all or part of the annuity as a survivorship annuity."

**§ 31-711 [7: 70a]. Precedence of payments upon death of teacher.**

In the event of death of any such teacher the order of precedence of payments shall be as follows: First, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within six months after the death of such teacher, payment shall be made into the registry of the District Court of the United States for the District of Columbia. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2.)

**§ 31-712 [7: 71]. Continuance in service deemed consent to deductions.**

Every teacher who shall continue in the service of the public schools of the District of Columbia after July 1, 1926, as well as every person who thereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for in this chapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this chapter, notwithstanding the provisions of chapter 6 of this title, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

**COMPILER'S NOTE**

The above reference to "chapter 6 of this title" was, in the original enactment, a reference to the act of June 20, 1906, the pertinent sections of which are contained in chapter 6 herein.

**AMENDMENT**

Sec. 11 as set out in the 1926 act is a reenactment of § 12 of the 1920 act changing the date set forth.

**§ 31-713 [7: 72]. Retirement provisions not to prevent discharge of teachers.**

Nothing in this chapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

**AMENDMENT**

The 1926 amendment merely reenacted this section of the 1920 act.

**§ 31-714 [7: 73]. Definitions—"Teacher"—"Annual salary"—"His."**

The term "teacher," under this chapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational



employees whose salaries are established in chapter 6 of this title, except the employees of the community center department and the department of school attendance and work permits; the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun "his" occurs in this chapter it shall be construed to mean both male and female teachers. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

#### COMPILER'S NOTE

The above reference to "chapter 6 of this title" was, in the original enactment a reference to the act of June 20, 1906, the pertinent sections of which are contained in chapter 6 herein.

#### AMENDMENT

The 1926 amendment deleted, following the words "District of Columbia" the first time they are used, the words "including the superintendent of public schools, the assistant superintendents, all supervisors and directors of instruction, group principals, principals, special teachers, and librarians therein; the term 'basic salary' shall be construed to mean the lowest salary of the class in which the teacher is placed," and inserted in lieu thereof the words which now follow the said words "District of Columbia" down to the last semicolon.

§ 31-715 [7: 74]. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

The Commissioners of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this chapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. The Commissioners of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this chapter, together with the total number of persons receiving annuities and the amounts paid them. And the Commissioners of the District of Columbia shall have made each year an actual valuation of this retirement fund and the operation thereof, which shall show the financial condition of the fund, and shall report the findings of such investigations to Congress at the opening of the following session. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 15; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury, and changed the requirement that "an actual valuation" be made "every third year" to "each year."

§ 31-716 [7: 75]. Annual estimates—No officer or employee receiving regular salary from government shall receive additional compensation.

The Commissioners of the District of Columbia shall include in their annual estimates of appropriations a sum sufficient to carry out the provisions of

this chapter and acts amendatory thereof. No officer or employee receiving a regular salary or compensation from the Government shall receive any additional salary or compensation for any service rendered in connection with the system of retiring teachers provided for by this chapter. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 16; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

§ 31-717 [7: 76]. Commissioners of the District of Columbia to make rules and regulations, and to carry this chapter into effect.

The Commissioners of the District of Columbia are hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment substituted the Commissioners of the District of Columbia for the Secretary of the Treasury.

#### CROSS REFERENCE

Rules and regulations generally, § 1-226 and notes.

§ 31-718 [7: 77]. Funds not assignable, nor subject to execution or levy.

None of the money mentioned in this chapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment merely reenacted the section of the 1920 act.

§ 31-719 [7: 78]. Chapter not applicable to teachers receiving annuity from State or other municipality.

The provisions of this chapter shall not apply to any teacher who receives an annuity from any State or municipality other than the District of Columbia. (Jan. 15, 1920, 41 Stat. 390, ch. 39, § 19; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

#### AMENDMENT

The 1926 amendment merely reenacted the section of the 1920 act.

§ 31-720 [7: 79]. Application of act—Annuities under prior act.

The provisions of this chapter shall apply to (A) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (B) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this chapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein: *Provided*, That nothing in this chapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926. (Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)



COMPILER'S NOTE

The act of June 11, 1926, cited to the text above, contains a § 2 which reads: "The amendments herein provided to 'An Act for the retirement of public-school teachers in the District of Columbia,' approved January 15, 1920, shall take effect July 1, 1926."

AMENDMENT

The act of 1926 inserted the letter A in parenthesis, changed "June, 1919" to "June, 1926," and added subsection (B) and the proviso.

Chapter 8.—USE OF SCHOOL BUILDINGS

Sec.

- 31-801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.
- 31-802. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.
- 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.
- 31-804. Board of Education may use Franklin School for office purposes.
- 31-805. Restriction on lot 14 in square 263.
- 31-806. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.
- 31-807. Certain land granted for colored schools to revert to United States.
- 31-808. Certain property set apart exclusively for school purposes.
- 31-809. Business High School used for senior high and elementary school purposes.

§ 31-801 [7: 171]. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.

The control of the public schools in the District of Columbia by the Board of Education shall extend to, include, and comprise the use of the public-school buildings and grounds by pupils of the public schools, other children and adults, for supplementary educational purposes, civic meetings for the free discussion of public questions, social centers, centers of recreation, playgrounds. The privilege of using said buildings and grounds for any of said purposes may be granted by the board upon such terms and conditions and under such rules and regulations as the board may prescribe. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1.)

CROSS REFERENCES

Board of Education, general provisions, § 31-101, and notes.

Duty to furnish school rooms for colored children, § 31-1113.

§ 31-802 [7: 172]. Board of Education authorized to accept free services—Teachers shall not be required or solicited to give—Use of school buildings and grounds.

The Board of Education is authorized to accept, upon written recommendation of the superintendent of schools, free and voluntary services of the teachers of the public schools, other educators, lecturers, and social workers and public officers of the United States and the District of Columbia: *Provided*, That teachers of the public schools shall not be required or compelled to perform any such services or solicited to make any contribution for such purposes: *Provided further*, That the public-school buildings and grounds of the District of Columbia shall be used for no purpose whatsoever other than those directly connected with the public-school system and as

further provided for in this section and section 31-801. (Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 2.)

CROSS REFERENCE

General provision forbidding acceptance of voluntary services, § 1-215.

§ 31-803 [7: 173]. Inspector of buildings to control and supervise construction and repairs of school buildings.

The inspector of buildings of the District shall have authority and control over and supervision of the construction and repairs of all school buildings if the commissioners deem best to delegate the same to him. (Mar. 3, 1879, 20 Stat. 408, ch. 182.)

CROSS REFERENCES

Building inspector, duties of assistant, § 1-728.  
Janitors to make minor repairs, § 31-1105.

Testing building materials, §§ 1-813, 1-814.

NOTES TO DECISIONS

OFFICE OF INSPECTOR—JUDICIAL NOTICE

The court will take judicial notice that there is an executive officer, subject to the authority of the commissioners, designated as the Inspector of Buildings. The appropriation bills of Congress for the District of Columbia have heretofore made provision for the payment of his salary from time to time, and his office and duties have been recognized by other acts. *McBride v. Ross* (13 App. D. C. 576).

§ 31-804 [7: 174]. Board of Education may use Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes. (Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5.)

AMENDMENTS

Act of March 3, 1917, provided for use of top floor.

Act of June 5, 1920, provided for use of all space except rooms occupied by grades one, two, three, and four.

§ 31-805 [7: 175]. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the city of Washington as lot number fourteen, in square number two hundred and sixty-three, which was conveyed to said city by the Commissioner of Public Buildings, under authority of an Act of Congress dated June fifth, eighteen hundred and sixty, for the use of the public schools in said city, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in section 31-806. (R. S., D. C., § 317.)

COMPILER'S NOTE

This section is probably executed and obsolete.

CROSS REFERENCE

Sale of public lands and buildings, §§ 9-301 to 9-306 and notes.

§ 31-806 [7: 176]. Sale of part of lot 14 in square 263 authorized—Proceeds, how invested.

The proceeds of that portion of lot number fourteen, in square number two hundred and fifty-three, which was authorized to be sold by an Act of Congress dated June fourth, eighteen hundred and seventy-two, shall be invested by the authorities of the District in another lot or part of a lot in the city of Washington, and in improvements thereon; and the



property so purchased shall be used for the purpose of the public schools, and for no other purpose. (R. S., D. C., § 318.)

#### COMPILER'S NOTES

This section is probably executed and obsolete.

The words "two hundred and fifty-three" are clearly a misprint in the original statute for "two hundred and sixty-three" (see 12 Stat. 27, ch. 77).

§ 31-807 [7:177]. Certain land granted for colored schools to revert to United States.

The lots of land numbered one, two, and eighteen, in square number nine hundred and eighty-five, in the city of Washington, which were designated and set apart by the Secretary of the Interior to be used for colored schools, and conveyed to the trustees of colored schools for the cities of Washington and Georgetown, by the Commissioner of Public Buildings, under authority of an act of Congress dated July 28, 1866, for the sole use of schools for colored children in the District of Columbia, shall, if converted to other uses, revert to the United States. (R. S., D. C., § 319.)

#### COMPILER'S NOTE

The words "except as provided in section 31-801" should probably be inserted in the last clause.

#### CROSS REFERENCE

Duty to furnish school rooms for colored children, § 31-1113.

§ 31-808 [7:178]. Certain property set apart exclusively for school purposes.

That parcel of land marked and designated upon the map of the city of Washington as part of lot number eleven, in square number one hundred and forty-one, beginning at the northwest corner of said lot, and running thence due south on the west line of said square, fifty feet; thence due east, thirty feet; thence due north, fifty feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between Eighth and Ninth Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and improvements thereon, are severally set apart and appropriated for the use of the public schools in the city of Washington, so long as they shall be occupied for that purpose, and no longer. (R. S., D. C., § 320.)

§ 31-809 [7:179]. Business High School used for senior high and elementary school purposes.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and elementary school purposes. (Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1.)

#### COMPILER'S NOTE

By act of February 25, 1929, 45 Stat. 1280, ch. 314, funds were appropriated for a new Business High School, and, upon completion of such building, the old building occupied by the Business High School was to be used as an elementary school.

## Chapter 9.—MEDICAL AND DENTAL COLLEGES

### Sec.

- 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.
- 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.
- 31-903. Penalty for failure to register and obtain permit.
- 31-904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.
- 31-905. Repeal provisions.

§ 31-901 [7:191]. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special Act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Commissioners of the District of Columbia and granted by them a written permit to commence or continue business in said District in compliance with the requirements of this chapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1.)

#### CROSS REFERENCE

Institutions of learning generally, § 29-401 et seq.

§ 31-902 [7:192]. Application for registration and permit—Regulations—Inquiry as to equipment.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Commissioners for registration and a permit to commence or continue business; and said Commissioners are hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as they may deem best, and shall have power, and it shall be their duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Commissioners shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as they may see fit to make, satisfied themselves that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

#### COMPILER'S NOTE

Section 3 of the act of May 4, 1896, 29 Stat. 113, ch. 154, provided as follows: "It shall be the duty of the proper officers of every medical or dental college not incorporated by a special act of Congress which is now doing business in said District to apply for such certificate and registration within thirty days of the passage of this act; and no such college hereafter sought to be opened in said District shall commence business without first obtaining such registration and permit."

§ 31-903 [7:193]. Penalty for failure to register and obtain permit.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or



commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the police court of said District, upon an information similar to that filed in the case of violations of the police regulations made by the said Commissioners, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and in default of payment thereof shall be imprisoned in the common jail of said District not less than thirty nor more than ninety days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4.)

**§ 31-904 [7: 194]. Injunction proceedings — Duty of commissioners—Jurisdiction of court.**

In any case when such action shall be necessary in the opinion of the said Commissioners to give full effect to the intent of this chapter they shall have power, and it shall be their duty, to file in the District Court of the United States for the District of Columbia, in the name of the said District, a bill in equity against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5.)

**§ 31-905 [7: 195]. Repeal provisions.**

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to Mar. 4, 1896, under the general incorporation laws in force in said District, so far as inconsistent with this chapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

**Chapter 10.—THE COLUMBIA INSTITUTION FOR THE DEAF**

- Sec.
- 31-1001. Establishment of corporation—Powers.
  - 31-1002. Power to confer degrees.
  - 31-1003. Terms of deed part of charter.
  - 31-1004. Use and alienation of property.
  - 31-1005. Management—Alteration of constitution.
  - 31-1006. Government directors—Appointment—Tenure.
  - 31-1007. Government directors—Term of office—Control of disbursements—Accounts.
  - 31-1008. Admission of deaf-mutes from District—Not an institution of charity.
  - 31-1009. Indigent feeble-minded applicants—Secretary of Interior—Cost of instruction—Annual estimates.
  - 31-1010. Expenses of students from District—Division between District and Federal Treasury.
  - 31-1011. Education of colored deaf-mute children of District.
  - 31-1012. Admission of students from States and Territories—No such student to be supported by United States.
  - 31-1013. Limitation on number of pupils from one State or Territory.
  - 31-1014. Number and compensation of employees included in annual budget.
  - 31-1015. Judges of the municipal court to report deaf and dumb persons in District.
  - 31-1016. Report of superintendent.
  - 31-1017. Annual report of president and directors.
  - 31-1018. Itemized report of expenses.
  - 31-1019. Education of indigent blind persons—Cost of instruction.

Sec.

- 31-1020. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.
- 31-1021. Title to certain real estate transferred to institution.
- 31-1022. Secretary of the Interior to supervise.
- 31-1023. Purchase of supplies.
- 31-1024. Report of Convention of American Instructors of the Deaf.

**§ 31-1001 [7: 211]. Establishment of corporation — Powers.**

The corporation created by the Act of February 16, 1857, under the name of the "Columbia Institution for the Instruction of the Deaf and Dumb and the Blind," shall have perpetual succession, and be capable to take, hold, and enjoy lands, tenements, hereditaments, and personal property, to use a common seal, and to alter the same at pleasure. But no real or personal property shall be held by the corporation, except such as may be necessary to the maintenance and efficient management of the institution. (Feb. 16, 1857, 11 Stat. 161, ch. 46, § 1; Feb. 23, 1865, 13 Stat. 436, ch. 50, § 1; R. S., § 4859; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

**AMENDMENT**

The name was originally "The Columbia Institute for the Instruction of the Deaf and Dumb, and the Blind," as set out above, but the act of Feb. 23, 1865 (13 Stat. 436) changed it to "Columbia Institute for the Instruction of the Deaf and Dumb." Finally the act of March 4, 1911, 36 Stat. 1422 provided: "From and after the passage of this act the Columbia Institution for the Deaf and Dumb shall be known and designated as the Columbia Institution for the Deaf."

**CROSS REFERENCES**

- Education in other institutions, § 31-1011.
- Education of the blind, § 31-1019.
- Feeble-minded persons, § 31-1009.

**§ 31-1002 [7: 212]. Power to confer degrees.**

The board of directors of the Columbia Institution for the Deaf are authorized and empowered to grant and confirm such degrees in the liberal arts and sciences to such pupils of the institution, or others, who, by their proficiency in learning or other meritorious distinction they shall think entitled to them, as are usually granted and conferred in colleges; and to grant to such graduates diplomas or certificates, sealed and signed in such manner as said board of directors may determine, to authenticate and perpetuate the memory of such graduation. (Apr. 8, 1864, 13 Stat. 45, ch. 52; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

**AMENDMENT**

Under act of 1911 the Columbia Institution for the Deaf and Dumb shall be known and designated as the Columbia Institution for the Deaf.

**§ 31-1003 [7: 213]. Terms of deed part of charter.**

The terms and conditions of the deed of transfer of the funds and property of Washington's Manual Labor School and Male Orphan Asylum Society of the District of Columbia shall be as obligatory upon the Columbia Institution for the Deaf as if they formed a part of its charter. (R. S., § 4860; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)



## AMENDMENT

The 1911 act provided that the Columbia Institution for the Deaf and Dumb should thereafter be known as the Columbia Institution for the Deaf.

§ 31-1004 [7: 214]. Use and alienation of property.

No part of the real or personal property held or acquired by the Columbia Institution for the Deaf shall be devoted to any other purpose than the education of the deaf and dumb, nor shall any portion of the real estate be aliened, sold, or conveyed, except under the authority of a special act of Congress. (R. S., § 4861; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## CROSS REFERENCE

See amendment note to § 31-1001.

§ 31-1005 [7: 215]. Management—Alteration of constitution.

The Columbia Institution for the Deaf shall be managed as provided for in its constitution, and such additional regulations as may from time to time be found necessary. The constitution may be altered consistently with law, in the manner therein provided. (R. S., § 4862; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## CROSS REFERENCES

See amendment note to § 31-1001.

Officers, trustees, or directors may not deal with the institution for financial gain, § 32-1007.

§ 31-1006 [7: 216]. Government directors — Appointment—Tenure.

In addition to the directors whose appointment has been provided for by law, there shall be three other directors of the Columbia Institution for the Deaf, appointed in the following manner: One Senator by the President of the Senate, and two Representatives by the Speaker of the House. These directors shall hold their offices for the term of a single Congress and be eligible to a reappointment. (R. S., § 4863; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## CROSS REFERENCE

See amendment note to § 31-1001.

§ 31-1007 [7: 217]. Government directors — Term of office—Control of disbursements—Accounts.

Directors appointed under the provisions of section 31-1006 shall remain in office until the appointment and acceptance of office of their successors; and the directors of the institution shall have control of the disbursements of all moneys appropriated by Congress for the benefit of said institution, accounts for which shall be settled and adjusted at the General Accounting Office as required by the provisions of section 236 of the Revised Statutes of the United States of America. (July 1, 1898, 30 Stat. 624, ch. 546, § 1; June 10, 1921, 42 Stat. 24, ch. 18, § 305.)

## AMENDMENT

The act of 1898 provided that accounts should be settled at the Treasury Department in accordance with § 236 of the Revised Statutes. The 1921 act amended this section of the Revised Statutes to provide for settlement in the General Accounting Office. As so amended, this section is set forth as § 71 of title 31, U. S. Code.

## CROSS REFERENCES

Officers, trustees, or directors may not deal with the institution for financial gain, § 32-1007.

Other provisions concerning term of office of members of Congress or Senators, § 32-1004.

§ 31-1008 [7: 218]. Admission of deaf-mutes from District—Not an institution of charity.

All deaf mutes of teachable age, of good mental capacity, and properly belonging to the District of Columbia shall be received and instructed in the Columbia Institution for the Deaf, their admission thereto being subject to the approval of the Superintendent of Public Schools in the District of Columbia. And said institution shall not be regarded nor classified as an institution of charity. (Mar. 1, 1901, 31 Stat. 844, ch. 670, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## AMENDMENT

Act of 1911 changed the name from Columbia Institution for the Deaf and Dumb to the Columbia Institution for the Deaf.

§ 31-1009 [7: 219]. Indigent feeble-minded applicants—Secretary of Interior—Cost of instruction—Annual estimates.

When any indigent applicant for admission to the Columbia Institution for the Deaf, belonging to the District of Columbia, and being of teachable age, is found on examination by the president of the institution to be of feeble mind, and hence incapable of receiving instruction among children of sound mind, the Secretary of the Interior may cause such person to be instructed in some institution for the education of feeble-minded children in Pennsylvania, or some other state, at a cost not greater for each pupil than is, or may be for the time being, paid by such state for similar instruction.

The estimates for this expense shall each year be submitted in the annual estimates for the expenses of the government of the District of Columbia. (June 16, 1880, 21 Stat. 275, ch. 235; Aug. 30, 1890, 26 Stat. 393, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions of the Interior Department relating to the Columbia Institution for the Deaf were transferred to the Federal Security Agency. See U. S. C., Title 5, § 133t, note.

## AMENDMENTS

Act of 1890 added second paragraph of this act.

Act of 1911 changed name of Columbia Institution for Deaf and Dumb to the Columbia Institution for the Deaf.

## CROSS REFERENCE

District Training School for feeble-minded persons, § 32-601 et seq.

§ 31-1010 [7: 220]. Expenses of students from District—Division between District and Federal Treasury.

All expenses attending the instruction of deaf and dumb persons admitted to the Columbia Institution for the Deaf from the District of Columbia, under section 31-1008, shall be paid from the revenues of the District of Columbia, and estimates for such expenses shall each year be submitted in the regular estimates for the expenses of the government of the District of Columbia. (Mar. 2, 1889, 25 Stat. 962, ch. 411, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)



## AMENDMENT

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

## CROSS REFERENCES

See amendment note to § 31-1001.

Division of expenses, see Compiler's Note under § 32-401.

The Federal Government now makes a lump-sum appropriation for the District, § 47-134.

### § 31-1011 [7: 221]. Education of colored deaf-mute children of District.

The directors of the Columbia Institution for the Deaf are authorized to provide for the education of colored deaf-mute children properly belonging to the District of Columbia, in the Maryland School for Colored Deaf-Mutes, or some other suitable school, at a cost not exceeding the per capita expense of educating the State pupils in such school. (Mar. 3, 1905, 33 Stat. 901, ch. 1406, § 1; June 27, 1906, 34 Stat. 503, ch. 3553; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## AMENDMENTS

Acts of 1905 and 1906 are the same in substance.

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

### § 31-1012 [7: 222]. Admission of students from States and Territories—No such student to be supported by United States.

Deaf mutes, not exceeding one hundred and forty-five in number, residing in the several States and Territories, applying for admission to the collegiate department of the Columbia Institution for the Deaf, shall be received on the same terms and conditions as those prescribed by law for residents of the District of Columbia, at the discretion of the president of the institution; but no student coming from either of the States shall be supported by the United States during any portion of the time he remains therein. (R. S., § 4865; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; July 1, 1918, 40 Stat. 680, ch. 113, § 1; June 24, 1935, 49 Stat. 394, ch. 286.)

## AMENDMENTS

R. S., § 4865, limited the number of nonresident students to 40.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

The 1918 act limited the number of nonresident students to 125.

The 1935 act raised the number to 145.

### § 31-1013 [7: 223]. Limitation on number of pupils from one State or Territory.

There shall not be admitted to the Columbia Institution for the Deaf under section 31-1012, nor shall there be maintained after such admission, at any one time from any state or territory exceeding three deaf-mutes while there are applications pending from deaf-mutes, citizens of states or territories having less than three pupils in said institution. (Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## AMENDMENT

Act of 1911 changed the name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

### § 31-1014 [7: 224]. Number and compensation of employees included in annual Budget.

There shall be included in the annual Budget a statement showing the number of persons employed each year in the Columbia Institution for the Deaf and the compensation paid to each. (Aug. 30, 1890, 26 Stat. 392, ch. 837, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1; June 10, 1921, 42 Stat. 20, ch. 18, § 214.)

## AMENDMENTS

The 1890 act provided for the inclusion of the statement required by this section in the Book of Estimates.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

The national budget system was created by the act of 1921.

### § 31-1015 [7: 225]. Judges of the municipal court to report deaf and dumb persons in District.

It shall be the duty of the judges of the municipal court of the District of Columbia to ascertain the names and residences of all deaf and dumb persons within their respective districts; who of them are of teachable age, and also who of them are in indigent circumstances; and to report the same to the president of the Columbia Institution for the Deaf. (R. S., § 4866; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## COMPILER'S NOTE

The words "within their respective districts" are now meaningless in the light of sections 11-701 to 11-749, which extends the jurisdiction of the municipal court to the entire District of Columbia. For a number of years recommendations for admission to the Columbia Institution for the Deaf have been made by the Superintendent of Schools and his assistants and not by judges of the municipal court.

## AMENDMENTS

The 1909 act changed the name and jurisdiction of the justice of the peace courts to the Municipal Court of the District of Columbia.

The 1911 act changed the name of the institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

### § 31-1016 [7: 226]. Report of superintendent.

The superintendent of the Columbia Institution for the Deaf shall, at the commencement of every December session of Congress, make a full and complete statement of all the expenditures made by virtue of any appropriations by Congress, including the amounts and the rates paid to the superintendent, and for teachers. (R. S. § 4867; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

## AMENDMENT

Act of 1911, changed name of Columbia Institution for Instruction of the Deaf and Dumb to Columbia Institution for the Deaf.

### § 31-1017 [7: 227]. Annual report of president and directors.

It shall be the duty of the president and directors of the Columbia Institution for the Deaf to report to the Secretary of the Interior the condition of the institution on the 1st day of July in each year, embracing in the report the number of pupils of each description received and discharged during the preceding year, and the number remaining in the institution; also the branches of knowledge and industry



taught, and the progress made therein; also a statement showing the receipts of the institution, and from what sources, and its disbursements, and for what objects. (R. S., § 4868; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

#### COMPILER'S NOTE

Under Reorganization Plan No. IV, April 11, 1940, the annual report of the president and directors of the Columbia Institution for the Deaf and the superintendent thereof, should be made to the Federal Security Administrator instead of the Secretary of the Interior. See U. S. C., Title 5, § 133t, note.

#### CROSS REFERENCE

See amendment note to § 31-1016.

§ 31-1018 [7: 228]. Itemized report of expenses.

The report of the Columbia Institution for the Deaf shall contain an itemized statement of all employees, the salaries or wages, respectively, of each of them, and also of all other expenses of said institution. (Mar. 3, 1883, 22 Stat. 625, ch. 143; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

#### CROSS REFERENCE

See amendment note to § 31-1016.

§ 31-1019 [7: 229]. Education of indigent blind persons—Cost of instruction.

Whenever the Secretary of the Interior is satisfied, by evidence produced by the president of the Columbia Institution for the Deaf, that any blind person of teachable age can not command the means to secure an education, he may cause such person to be instructed in some institution for the education of the blind, in Maryland, or some other State, at a cost not greater for each pupil than is, or may be for the time being, paid by such State, and to cause the same to be paid out of the Treasury of the United States. (R. S., § 4869; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

#### COMPILER'S NOTE

This section relates to the education of blind persons as to which neither the Columbia Institution for the Deaf nor the Secretary of the Interior exercises, at the present time, any authority. The Superintendent of Schools of the District of Columbia exercises full charge of the education of blind children in the District of Columbia.

#### CROSS REFERENCE

See amendment note to § 31-1016.

§ 31-1020 [7: 230]. Appropriation for instruction of indigent blind from District—Division between District and Federal Treasury.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in the Columbia Institution for the Deaf, shall be paid out of the revenues of the District of Columbia. (Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

#### AMENDMENTS

Act of 1911 changed name of Columbia Institution for the Deaf and Dumb to Columbia Institution for the Deaf.

Act of 1899 provided for 50 percent of the expense to be paid from funds of the District of Columbia and 50 percent from the Treasury.

#### CROSS REFERENCE

See § 31-1010.

§ 31-1021 [7: 231]. Title to certain real estate transferred to institution.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of sixty-six feet, and the east boundary of the grounds of the Columbia Institution for the Deaf, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right of way, shall be vested in the Columbia Institution for the Deaf, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Columbia Institution for the Deaf. (July 1, 1916, 39 Stat. 310, ch. 209.)

#### CROSS REFERENCE

Closing or adjusting streets and highways for benefit of religious or charitable organizations, § 7-113.

#### STATUTORY REFERENCES

*Ninth Street Northeast approach.*—In order to provide a suitable approach to the Ninth Street Northeast overpass across the tracks of the Baltimore and Ohio and Pennsylvania Railroads and furnish better access to a part of the property of the Columbia Institution for the Deaf, described in the records of the office of the assessor for the District of Columbia as parcel 141/4, the board of directors of the Columbia Institution for the Deaf are hereby authorized to dedicate to the District of Columbia a strip of land ninety feet wide traversing the north part of said property approximately as shown and designated on the revised highway plan of the District of Columbia as Mount Olivet Road Northeast. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 1.)

*Adjustment of boundaries and exchange of properties.*—In order to readjust the boundaries and exchange properties of the Columbia Institution for the Deaf, parcel 141/4, and Brentwood Park, United States Reservation Numbered 495, the board of directors of the Columbia Institution for the Deaf and the Secretary of the Interior are hereby authorized to convey fee-simple title by deeds, each to the other, to such parts of the property of the Columbia Institution for the Deaf and Brentwood Park (United States Reservation Numbered 495) as in their judgment is to the mutual advantage of both the institution and the park and playground system of the District of Columbia, provided such exchange of properties shall be approved by the National Capital Park and Planning Commission. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 2.)

*Sale of lands authorized.—Investment of proceeds.*—The board of directors of the Columbia Institution for the Deaf are further authorized to sell and to convey fee-simple title by deed that portion of its real estate, now owned by the Columbia Institution for the Deaf or acquired by exchange under section 2 of this act, which will lie north of the proposed location of Mount Olivet Road extended after a definite survey of such road is established, such sale to be subject to the approval of the Secretary of the Interior. Funds received by the sale of this portion of real property of the institution shall be considered a part of the capital structure of the corporation, which may be invested in securities, buildings, or other real property by the board of directors. If invested in securities, only the income from such investment shall be used for current expenses of the institution. (Act of Aug. 3, 1939, 53 Stat. 1179, ch. 414, § 3.)

§ 31-1022 [7: 232]. Secretary of the Interior to supervise.

The Secretary of the Interior is charged with the supervision of public business relating to the Columbia Institution for the Deaf. (R. S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285.)



## COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions of the Interior Department relating to the Columbia Institution for the Deaf were transferred to the Federal Security Agency. See U. S. C., Title 5, § 133t, note.

## AMENDMENT

The 1911 act changed the name of the Institution from the Columbia Institution for the Instruction of the Deaf and Dumb.

## STATUTORY REFERENCE

This section is in U. S. C., Title 5, § 485.

## § 31-1023 [7: 233]. Purchase of supplies.

The purchase of supplies and equipment or the procurement of services for the Columbia Institution for the Deaf may be made in open market, without compliance with sections 5 and 6, title 41 of the Code of Laws of the United States of America, in the manner common among business men, when the aggregate amount of the purchase or services does not exceed \$100 in any instance. (June 5, 1924, 43 Stat. 392, ch. 264; Mar. 3, 1925, 43 Stat. 1143, ch. 462; Jan. 12, 1927, 44 Stat. 936, ch. 27, § 1; Oct. 10, 1940, 54 Stat. 1110, ch. 851, § 2 (g).)

## AMENDMENT

The acts of 1925 and 1927 repeat the provisions of the act of 1924.

## STATUTORY REFERENCE

This section is in U. S. C., Title 5, § 496.

## § 31-1024 [7: 234]. Report of Convention of American Instructors of the Deaf.

The Convention of American Instructors of the Deaf shall report to Congress, through the president of the Columbia Institution for the Deaf at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf. (Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4.)

## Chapter 11.—MISCELLANEOUS

## Sec.

- 31-1101. Whole school-day sessions to be given.
- 31-1102. Compulsory vaccination against smallpox.
- 31-1103. Service in high school cadets compulsory—Excuse.
- 31-1104. School officials not to profit on supplies or textbooks purchased for schools.
- 31-1105. Janitors to do minor repair work—Selection.
- 31-1106. Names of certain schools changed.
- 31-1107. John A. Chamberlain Vocational School.
- 31-1108. Title and jurisdiction over Reservation 277-F transferred for school purposes—Authority to close streets and alleys.
- 31-1109. Board of Education may accept and apply donations for colored schools—Accounting.
- 31-1110. Education of colored children.
- 31-1111. Placement of children in schools.
- 31-1112. Proportionate amount of school moneys to be set apart for colored schools.
- 31-1113. Facilities for educating colored children to be provided.
- 31-1114. Education of children of veterans who lost lives during war—Appropriation authorized.
- 31-1115. Bond not required for supplies issued by War Department.
- 31-1116. School cadets—Issuance of arms—Insurance.

## § 31-1101 [7: 241]. Whole school-day sessions to be given.

All children of school age being instructed in the schools of the District beyond the second grade shall

be given a whole school-day session. (June 20, 1906, 34 Stat. 316, ch. 3446, § 1.)

## § 31-1102 [7: 242]. Compulsory vaccination against smallpox.

No child shall be admitted into the public schools who shall not have been duly vaccinated or otherwise protected against the smallpox. (R. S., D. C., § 274.)

## § 31-1103 [7: 243]. Service in high school cadets compulsory—Excuse.

Every male pupil in attendance at the high schools shall be admitted to and shall serve in the high school cadets unless excused from such service by the principal, on certificate of one of the medical inspectors of schools that he is physically disqualified for such service, or on the written request of his parent or guardian. (Mar. 2, 1907, 34 Stat. 1141, ch. 2510.)

## CROSS REFERENCE

Bond or fire insurance not required on military equipment, §§ 31-1115, 31-1116.

## § 31-1104 [7: 244]. School officials not to profit on supplies or textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia. (Aug. 7, 1894, 28 Stat. 254, ch. 232.)

## CROSS REFERENCE

Purchase of school books and supplies, § 31-401 et seq.

## § 31-1105 [7: 245]. Janitors to do minor repair work—Selection.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing seats and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work. (Feb. 25, 1885, 23 Stat. 318, ch. 145.)

## CROSS REFERENCE

Construction and repair of school buildings under control of building inspector, § 31-803.

## § 31-1106 [7: 246]. Names of certain schools changed.

The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School. (June 29, 1922, 42 Stat. 689, ch. 249.)

## § 31-1107 [7: 246a]. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School. (July 15, 1939, 53 Stat. 1016, ch. 281, § 1.)

## § 31-1108 [7: 247]. Title and jurisdiction over Reservation 277-F transferred for school purposes—Authority to close streets and alleys.

Title to and jurisdiction over reservation 277-F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the commis-



sioners of the District of Columbia are hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes. (Mar. 4, 1925, 43 Stat. 1320, ch. 556.)

## CROSS REFERENCES

Abandonment or readjustment of street and highways to provide land for schools, § 7-113.

Certain streets closed or abandoned, § 7-123.

§ 31-1109 [7: 248]. Board of Education may accept and apply donations for colored schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the schools for colored children by persons disposed to aid in the elevation of the colored population in the District, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S., D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

§ 31-1110 [7: 249]. Education of colored children.

It shall be the duty of the Board of Education to provide suitable and convenient houses or rooms for holding schools for colored children, to employ and examine teachers therefor, and to appropriate a proportion of the school funds, to be determined upon number of white and colored children, between the ages of 6 and 17 years, to the payment of teachers' wages, to the building or renting of schoolrooms, and other necessary expenses pertaining to said schools, to exercise a general supervision over them, to establish proper discipline, and to endeavor to promote a thorough, equitable and practical education of colored children in the District of Columbia. (R. S., D. C. § 281; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

## AMENDMENTS

Act of 1878 abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of 1906 gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

## CROSS REFERENCES

Compulsory school attendance, § 31-201 et seq.

Division of salaries between white and colored schools, § 31-628.

General powers and duties of board of education, § 31-103.

Supervision and control of colored schools, § 31-109.

§ 31-1111 [7: 250]. Placement of children in schools.

Any white resident shall be privileged to place his or her child or ward at any one of the schools provided for the education of white children in the District of Columbia he or she may think proper to select, with the consent of the Board of Education; and any colored resident shall have the same rights with respect to colored schools. (R. S., D. C. § 282; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

## AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

## CROSS REFERENCE

See notes to § 31-1110.

§ 31-1112 [7: 251]. Proportionate amount of school moneys to be set apart for colored schools.

It shall be the duty of the proper authorities of the District to set apart each year from the whole fund received from all sources by such authorities applicable to purposes of public education in the District of Columbia, such a proportionate part of all moneys received or expended for school or educational purposes, including the cost of sites, buildings, improvements, furniture and books, and all other expenditures on account of schools, as the colored children between the ages of 6 and 17 years bear to the whole number of children, white and colored, between the same ages, for the purpose of establishing and sustaining public schools for the education of colored children; and such proportion shall be ascertained by the last reported census of the population made prior to such apportionment, and shall be regulated at all times thereby. (R. S., D. C., § 306; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

## AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the board of education appointed by Supreme (now District) Court Judges.

## CROSS REFERENCE

See notes to § 31-1110.

§ 31-1113 [7: 252]. Facilities for educating colored children to be provided.

It is the duty of the Board of Education to provide suitable rooms and teachers for such a number of schools in the District of Columbia as, in its opinion, will best accommodate the colored children in the District of Columbia. (R. S., D. C., § 310; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 20, 1906, 34 Stat. 316, ch. 3446, § 2.)

## AMENDMENTS

Act of June 11, 1878, abolished the board of school trustees and transferred the powers and duties to the Commissioners of the District.

Act of June 20, 1906, gave control of the public schools of the District to the Board of Education appointed by Supreme (now District) Court Judges.

## CROSS REFERENCE

See notes to § 31-1110.

§ 31-1114 [7: 259]. Education of children of veterans who lost lives during war—Appropriation authorized.

There is hereby authorized to be appropriated, from funds to the credit of the District of Columbia in the Treasury of the United States not otherwise appropriated, the sum of \$3,600, annually, for the



fiscal years 1935 to 1943, inclusive, for aid in the education of children (between the ages of sixteen and twenty-one years, inclusive, who have had their domicile in the District of Columbia for at least five years) of those who lost their lives during the World War as a result of service in the military or naval forces of the United States, including tuition, fees, maintenance, and the purchase of books and supplies: *Provided*, That not more than \$200 shall be available for any one child in any one year: *Provided further*, That appropriations made in accordance with this section shall be expended, under rules and regulations prescribed by the Board of Education of the District of Columbia, only for such children as the said Board, from time to time, may find to be in need of such aid and in such amounts as the said Board from time to time may determine in the case of each child. (June 19, 1934, 48 Stat. 1125, ch. 671.)

## CROSS REFERENCES

Free textbooks, § 31-401 et seq.

Liability for tuition, § 31-301 et seq.

§ 31-1115 [7: 260]. Bond not required for supplies issued by War Department.

A bond shall not be required on account of military supplies or equipment issued by the War Department for military instruction and practice by the students of high schools in the District of Columbia. (July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. —, ch. 333, § 1.)

§ 31-1116. School cadets—Issuance of arms—Insurance.

Arms authorized to be issued by the War Department to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire. (April 27, 1904, 33 Stat. 379, ch. 1628.)



## TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL AND PENAL INSTITUTIONS AND AGENCIES

Chap.	Sec.
1. Association for Works of Mercy-----	32-101
2. Washington Humane Society-----	32-201
3. Hospitals and asylums—General provisions-----	32-301
4. Saint Elizabeths Hospital-----	32-401
5. Industrial Home School-----	32-501
6. District Training School-----	32-601
7. Home care for dependent children-----	32-701
8. National Training School for Boys-----	32-801
9. National Training School for Girls-----	32-901
10. Miscellaneous -----	32-1001

### Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

Sec.	Description
32-101.	Custody and control of girls under 18 years of age—How obtained—Approval by probate court.
32-102.	Girls under 18 years of age convicted of crime—Commission to custody of association.
32-103.	Custody and discharge of inmates.
32-104.	Probate court may appoint association as guardian—Term of guardianship.

§ 32-101 [8: 111]. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

The Association for Works of Mercy, a charitable corporation in the District of Columbia, is hereby authorized and empowered to receive and have the custody and control of, and to suitably maintain, teach, employ, and discipline girls under the age of eighteen years, resident in the District of Columbia, until they attain the age of eighteen years. The right to the custody and control of any such girl shall be obtained in the manner following:

First. By a written instrument executed by the father of such girl, giving such custody and control to said association and renouncing parental rights.

Second. If the father be not living, or is unknown, or not resident in the District of Columbia, by a written instrument executed by the mother of such girl, giving such custody and control to said association and renouncing parental rights.

Third. By a written instrument executed by the guardian of the person of such girl, giving such custody and control to said association and renouncing the rights of guardianship.

Fourth. If there be no father, or mother, or guardian of such girl living, or known, resident in the District of Columbia, by an instrument in writing executed by such girl, surrendering herself to the custody, control, and maintenance of said association.

Fifth. No such instrument shall be effectual in law until it shall be approved by the judge of the probate court of the District of Columbia by an indorsement of such approval thereon signed by such judge. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 1; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

### CROSS REFERENCES

National Training School for Girls, § 32-901 et seq.  
Powers and duties of Board of Public Welfare, § 3-101 et seq.

§ 32-102 [8: 112]. Girls under 18 years of age convicted of crime—Commission to custody of association.

When any girl under the age of eighteen years shall be duly convicted of any offense punishable by fine or imprisonment for a term less than two years before any court in the District of Columbia, if it shall appear to the satisfaction of the court that such girl is a suitable subject for the custody of said association, the court may, instead of imposing such fine or imprisonment, and with the assent of said association, cause such girl to be committed to the custody and control of said association, there to remain until she shall attain the age of eighteen years, or be otherwise discharged in due course of law. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 2.)

§ 32-103 [8: 113]. Custody and discharge of inmates.

A girl, duly received into the institution of the said association, shall be kept there, disciplined, instructed, employed, and governed under the direction of said association until she is either reformed and discharged or has attained the age of eighteen years; but the association shall have the right to discharge and return to the parents, guardian, or protector any girl who, in its judgment, ought, for any cause, to be removed from the institution, and in such case the association shall enter upon its minutes the reasons for her discharge; and in case such girl was received under the order of any criminal court, a copy of the minute of such reasons shall be forthwith transmitted to the court under whose order she was received. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 3.)

§ 32-104 [8: 114]. Probate court may appoint association as guardian—Term of guardianship.

The probate court of the District of Columbia shall have power to appoint the said association the guardian of the person of any girl under the age of eighteen years, in the same manner and with the same effect that it has power to appoint guardians of the person of female infants. And such guardianship shall continue until such girl shall attain the age of eighteen years, unless the probate court shall discharge the same or otherwise direct. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 4; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116.)

### Chapter 2.—WASHINGTON HUMANE SOCIETY

Sec.	Description
32-201.	Incorporation—Name.
32-202.	Officers.
32-203.	Officers to be chosen from members.



## Sec.

- 32-204. By-laws.  
 32-205. Police to arrest law violators at request of member of society—Evidence of membership.  
 32-206. Disposition of fines.  
 32-207. Law effective throughout District.  
 32-208. Society authorized to prevent cruelty to children.  
 32-209. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.  
 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.  
 32-211. Right to alter, amend or repeal reserved.

## § 32-201 [8: 121]. Incorporation—Name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzertott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faehtz, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

## AMENDMENT

This section is a composite of credits cited in the history line.

## § 32-202 [8: 122]. Officers.

The officers of said corporation shall consist of a president, five vice-presidents, one secretary, one treasurer, an executive committee of eleven members, and such other officers as shall from time to time seem necessary to this society. (June 21, 1870, 16 Stat. 158, ch. 135, § 2.)

## § 32-203 [8: 123]. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the society. (June 21, 1870, 16 Stat. 158, ch. 135, § 3.)

## § 32-204 [8: 124]. Bylaws.

The said society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above named, and for the general regulation and management of its affairs, shall have power to form a code of by-laws, not inconsistent with the laws of the District of Columbia, or of the United States, which

code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the society, its officers, and members. (June 21, 1870, 16 Stat. 158, ch. 135, § 4.)

## § 32-205 [8: 125]. Police to arrest law violators at request of member of society—Evidence of membership.

The police force of the District of Columbia shall, upon application of any member of the association, who shall have viewed any violation of the law or ordinances of the city for the prevention of cruelty to animals, arrest offending parties without a warrant, who shall be taken by such police officer before the police court for trial; and the proper evidence of such membership to a police officer shall be the exhibition of a badge or certificate of membership. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R. S., D. C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43.)

## AMENDMENT

Section 43 of the 1901 act (§ 11-602) gives to and defines the jurisdiction of the police court. As enacted, the 1870 act provided for jurisdiction of "offending parties" by the justice of the peace court.

## CROSS REFERENCES

Arrest of persons keeping animals or fowls for fighting or baiting, § 22-809.

Arrests under statutes relating to the prevention of cruelty to children and animals, § 22-804.

Criminal prosecution, § 22-801 et seq.

## § 32-206 [8: 126]. Disposition of fines.

One-half of all the fines collected through the instrumentality of the society or its agents, for violations of such laws, shall accrue to the benefit of said society. (June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48.)

## CROSS REFERENCE

Association entitled to fines and forfeitures levied in prosecution of laws to prevent cruelty to animals, § 22-806.

## § 32-207 [8: 127]. Law effective throughout District.

The provisions of sections 32-201 to 32-207 shall be general within the boundaries of the District of Columbia. (June 21, 1870, 16 Stat. 159, ch. 135, § 7.)

## § 32-208 [8: 128]. Society authorized to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before such court in any proceeding taken. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

## NOTES TO DECISIONS

## POWERS OF SOCIETY

This section and § 32-209 gave the Washington Humane Society authority to prefer complaints before any court of the District of Columbia having jurisdiction in any case where the welfare of a child was involved. They also gave authority and power to the agents of said society to take before said courts dependent and delinquent children, and to prosecute those responsible for such de-



pendency or delinquency. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32-209 [8:129]. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

The commissioners of the District of Columbia shall, by the police force of said District, aid the said society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the commissioners of the said District, and their successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said society, or they may commission any duly appointed agents of said society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the juvenile court of the District of Columbia, which offenders shall be taken by such agents or officers before the said juvenile court of the District of Columbia for trial. Said agents or officers are also hereby empowered to bring before the said court any child who is subjected to cruel treatment, wilful abuse, or neglect, or any child under seventeen years of age found in a house of ill-fame; and said court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

#### AMENDMENT

The act of 1906 changed the authority from police court to the "juvenile court" and raised age limit to "seventeen."

#### NOTES TO DECISIONS

##### MARRIAGE OF WARD OF COURT

The marriage of an incorrigible girl does not automatically terminate the control of the juvenile court over such minor. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32-210 [8:130]. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

The commissioners of the District of Columbia are authorized, in their discretion, to detail from time to time one or more members of the Metropolitan police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children. (June 25, 1892, 27 Stat. 60, ch. 135, § 2.)

§ 32-211 [8:131]. Right to alter, amend, or repeal reserved.

Congress shall have power to alter, amend, or repeal sections 32-201 to 32-207 at any time. (June 21, 1870, 16 Stat. 159, ch. 135, § 8.)

## Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

### Sec.

- 32-301. Private hospitals and asylums—To be licensed.
- 32-302. Health officer to enforce regulations—Inspection.
- 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.
- 32-304. Commissioners of the District of Columbia to make regulations.
- 32-305. Prosecutions in police court.
- 32-306. Smallpox hospital—Regulations.
- 32-307. Washington Asylum Hospital continued.
- 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.
- 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.
- 32-310. Admission of pay patients to Tuberculosis Hospital.
- 32-311. Limitation on erection of hospital for contagious diseases.
- 32-312. Children's tuberculosis sanatorium—Construction and equipping authorized.
- 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.
- 32-314. Repairs or improvements to Columbia Hospital to be under direction of Superintendent of United States Capitol Building.
- 32-315. Vacancies among trustees of Columbia Hospital filled by Commissioners.
- 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.
- 32-317. The Freedmen's Hospital—Direction—Expenditures.
- 32-318. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.
- 32-319. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.
- 32-320. Unclaimed money of deceased patients.

§ 32-301 [8:141]. Private hospitals and asylums—To be licensed.

No person shall in the District of Columbia establish or maintain any private hospital or asylum, either for the reception of human beings or of domestic animals, unless or until licensed by the commissioners of said District. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 1.)

#### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Exemption from provisions of Alcoholic Beverage Control Act, § 25-109.

Hospital liens, § 38-301 et seq.

Powers and duties of Board of Public Welfare concerning charitable, corrective, and penal institutions, § 3-101 et seq.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33-418.

#### NOTES TO DECISIONS

##### LIABILITY FOR TORTS

Employees of charitable hospital are not "beneficiaries" but are strangers to the charity, and the hospital's immunity from liability for torts of its employees or agents does not preclude recovery by them for injuries. *Hughes v. President and Directors of Georgetown College* ((D. C. D. C.), 33 Fed. Supp. 867).

§ 32-302 [8:142]. Health officer to enforce regulations—Inspection.

It shall be the duty of the health officer of the District of Columbia, and of such agents and employees in the service of the health department of said District as he may designate for that purpose, to enforce



the provisions of sections 32-301 to 32-305 and of all regulations made by authority thereof; and said health officer and agents and employees are hereby authorized, in the performance of the duty aforesaid, to enter and inspect during all reasonable hours all private hospitals and asylums in said District. No person shall interfere with said health officer, or with any agent or employee aforesaid, in the performance of his official duty, nor hinder, prevent, or refuse to permit any inspection authorized by said sections. (Apr. 20, 1908, 35 Stat. 64, ch. 148, § 2.)

**§ 32-303 [8:143]. Penalties for violation of sections 32-301, 32-302 or regulations.**

Any person who, for himself or as the employee or agent of another person, or as a member, officer, or employee or a firm or corporation, violates any of the provisions of sections 32-301, 32-302, or any regulations made hereunder by the commissioners of the District of Columbia, or aids in the violation thereof, shall be punished by a fine not exceeding two hundred dollars or by imprisonment for not more than thirty days, or by both fine and imprisonment, in the discretion of the court. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 3.)

**§ 32-304 [8:144]. Commissioners of the District of Columbia to make regulations.**

The commissioners of the District of Columbia be, and they are hereby, authorized and empowered to promulgate from time to time such regulations as in their judgment public interests require to govern the establishment and maintenance of private hospitals and asylums, whether for human beings or for domestic animals, and to regulate the issue, suspension, and revocation of licenses aforesaid. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 4.)

**CROSS REFERENCES**

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Rules and regulations generally, § 1-226 and notes.

**§ 32-305 [8:145]. Prosecutions in police court.**

All prosecutions under sections 32-301 to 32-304 shall be in the police court of the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5.)

**§ 32-306 [8:146]. Smallpox hospital—Regulations.**

The commissioners of the District of Columbia are hereby authorized to make rules and regulations for the government of the smallpox hospital. (June 8, 1896, 29 Stat. 281, ch. 373.)

**CROSS REFERENCE**

Power of Commissioners to make rules and regulations to prevent and control spread of communicable diseases, § 6-118.

**§ 32-307 [8:147]. Washington Asylum Hospital continued.**

The hospital service being rendered on June 29, 1922, by the Washington Asylum Hospital, in so far as it is not provided for in the new buildings of the Gallinger Municipal Hospital, may be continued in the old buildings occupied on June 29, 1922. (June 29, 1922, 42 Stat. 702, ch. 249, § 1.)

**NOTES TO DECISIONS**

**DEDICATION OF TRACT REPEALED**

Mere change of location of the Gallinger Hospital served to repeal the original dedication of the Upshur tract for municipal hospital purposes. *Rudolph v. Hunt* (52 App. D. C. 343, 286 Fed. 1007).

**§ 32-308 [8:148]. Admission of pay patients to psychopathic ward of Gallinger Hospital.**

Pay patients may be admitted to the psychopathic ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302, § 1.)

**COMPILER'S NOTE**

This section may be superseded by § 3-108, which gives the Board of Public Welfare power to regulate admission of patients.

**§ 32-309 [8:148a]. Admission of pay patients to contagious-disease ward of Gallinger Hospital.**

Pay patients may be admitted to the contagious-disease ward of the Gallinger Municipal Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (Apr. 14, 1932, 47 Stat. 79, ch. 98, § 1.)

**COMPILER'S NOTE**

This section may partially supersede § 3-108, which gives the Board of Public Welfare power to regulate admission of patients.

**§ 32-310 [8:149]. Admission of pay patients to Tuberculosis Hospital.**

Pay patients may be admitted to the Tuberculosis Hospital for care and treatment at such rates and under such regulations as may be established by the Commissioners of the District of Columbia, in so far as such admissions will not interfere with admission of indigent patients. (June 7, 1924, 43 Stat. 568, ch. 302.)

**CROSS REFERENCE**

Tuberculosis hospital under jurisdiction and control of the health department, § 6-117.

**§ 32-311 [8:150]. Limitation on erection of hospital for contagious diseases.**

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within three hundred feet of any building owned by a private individual or any other party than the one erecting the building. (Mar. 2, 1895, 28 Stat. 758, ch. 176.)

**CROSS REFERENCE**

Commissioners may make rules and regulations to control and prevent spread of communicable diseases, § 6-118.

**§ 32-312 [8:151]. Children's tuberculosis sanatorium—Construction and equipping authorized.**

The Commissioners of the District of Columbia are authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such commissioners, suitable



buildings and structures for use as a children's tuberculosis sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories. (Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1.)

#### COMPILER'S NOTES

Section 2 of the act of March 1, 1929, 45 Stat. 1425, ch. 422, D. C. Code 1929, title 8, § 152, authorized an appropriation of \$500,000, or so much thereof as might be necessary to carry out the provisions of § 1 of said act (§ 32-312), to be appropriated in like manner as other appropriations for the District of Columbia.

The act of April 18, 1930 (46 Stat. 218, ch. 186), increased the authorized appropriation for the children's tuberculosis sanatorium from \$500,000 to \$625,000 or so much thereof as may be necessary. The act further provided: "That if the land proposed to be acquired as a site for the said sanatorium is without the District of Columbia the title to said property shall be taken directly to and in the name of the United States, and in case a satisfactory price cannot be agreed upon for the purchase of said land, the Attorney General of the United States, at the request of the Commissioners of the District of Columbia, shall institute condemnation proceedings to acquire such land as may be selected for said site either in the State of Maryland or in the State of Virginia in accordance with the laws of said States, and expenses of procuring evidence of title or of condemnation, or both, shall be paid out of the appropriation herein made for the purchase of said site."

#### § 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.

Pay patients may hereafter (after June 23, 1936) be admitted to the Children's Tuberculosis Sanatorium for care and treatment at such rates and under such regulations as may be established by the commissioners of the District of Columbia, insofar as such admissions will not interfere with admission of indigent patients. (June 23, 1936, 49 Stat. 1880, ch. 726, § 1.)

#### § 32-314 [8: 153]. Repairs or improvements to Columbia Hospital to be under direction of Superintendent of United States Capitol Building.

All repairs or improvements made to the Columbia Hospital for Women and Lying-in Asylum buildings and grounds shall be made under the direction and supervision of the Superintendent United States Capitol Building and Grounds under estimates submitted to Congress through the Secretary of the Interior. (Mar. 4, 1915, 38 Stat. 1147, ch. 147.)

#### § 32-315 [8: 154]. Vacancies among trustees of Columbia Hospital filled by Commissioners.

As vacancies occur among the trustees of the Columbia Hospital for Women and Lying-in Asylum, other than members of Congress, they shall be filled by the District commissioners. (Mar. 3, 1893, 27 Stat. 551, ch. 199, § 1.)

#### § 32-316 [8: 155]. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.

Providence Hospital and Garfield Memorial Hospital shall receive at any time such patients suffering with minor contagious diseases as may be sent by the commissioners of the District of Columbia at the request of the Health Officer of the District. (July 1, 1898, 30 Stat. 635, ch. 546.)

#### CROSS REFERENCE

Rules and regulations by Commissioners to prevent spread of communicable diseases, §§ 6-118, 32-306.

#### § 32-317 [8: 156]. The Freedmen's Hospital—Direction—Expenditures.

The Freedmen's Hospital in the District of Columbia shall, until otherwise ordered by Congress, be continued under the direction of the Secretary of the Interior who shall submit estimates for expenses and maintenance. (R. S., § 2038; June 23, 1874, 18 Stat. 223, ch. 455, § 1.)

#### COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions relating to the Freedmen's Hospital were transferred from the Interior Department to the Federal Security Agency. See U. S. C., title 5, § 133t, note.

#### AMENDMENTS

R. S. 2038 provided as follows: "The Freedmen's Hospital and Asylum in the District of Columbia is, until otherwise ordered by Congress, continued under the control and supervision of the Secretary of War, who shall make all estimates, pass all accounts, and be responsible to the Treasury for all expenditures; but no part of any appropriation shall be used in support of, or to pay the expenses on account of, any person hereafter to be admitted to such Hospital and Asylum, unless persons removed thither from some other Government hospital."

#### § 32-318 [8: 157]. Admission of patients to Freedmen's Hospital—Charges—Disposition of money collected.

Patients may be admitted to Freedmen's Hospital for care and treatment on the payment of such reasonable charges therefor as the Secretary of the Interior shall prescribe. All moneys so collected shall be paid into the treasury to the credit of Freedmen's Hospital, to be disbursed under the supervision of the Secretary of the Interior for subsistence, fuel and light, clothing, bedding, forage, medicine, medical and surgical supplies, surgical instruments, repairs, furniture, and other absolutely necessary expenses incident to the management of the hospital. (June 26, 1912, 37 Stat. 172, ch. 182, § 1; May 29, 1928, 45 Stat. 992, ch. 901, § 1, par. 78.)

#### COMPILER'S NOTE

The act of 1928 amended this section by deleting the following: "A report as to expenditures thereof shall be made annually to Congress."

#### § 32-319 [8: 158]. Authority to contract for the care and treatment of persons from District of Columbia in Freedmen's Hospital.

The Secretary of the Interior is authorized to enter into contract with the Board of Public Welfare of the District of Columbia for the care and treatment of persons from the District of Columbia admitted to the Freedmen's Hospital; and any money that may be received, from this source, shall be paid to the Secretary of the Interior, to be applied to the uses and purposes of the hospital. (Mar. 3, 1905, 33 Stat. 1190, ch. 1483, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

#### AMENDMENT

Act of 1905 was amended by substituting Board of Public Welfare for Board of Charities.

#### § 32-320 [8: 159]. Unclaimed money of deceased patients.

All unclaimed money left at the Freedmen's Hospital by deceased patients shall, after a period of three years, be deposited in the treasury of the United States to the credit of miscellaneous receipts. (July 1, 1916, 39 Stat. 311, ch. 209, § 1.)



## Chapter 4.—SAINT ELIZABETHS HOSPITAL

Sec.

- 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.
- 32-402. Payment of Federal Treasury of part of expense from appropriations for District.
- 32-403. Payments to superintendent to be credited to appropriations for care and maintenance of patients.
- 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.
- 32-405. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.
- 32-406. Private patients—Rate of board—Friends to comply with regulations.
- 32-407. Admission of insane convicts.

§ 32-401 [16: 11]. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

The expense of the indigent persons who may be admitted to Saint Elizabeths Hospital from the District of Columbia shall be paid from the revenues of said District, provided that such indigent persons shall be admitted only upon the order of the executive authority of said District. (Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

## COMPILER'S NOTES

Acts 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis \* \* \*. After June 30, 1922, where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition \$9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see Act of June 12, 1940, 54 Stat. —, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938,

52 Stat. 375, § 8, which added Title 10, to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

## CROSS REFERENCES

Commitment of feeble-minded persons, § 32-622.

Federal Government now makes a lump-sum appropriation for the District, § 47-134.

Other provisions concerning insane persons, criminally insane, inquests, commitment, payment of expenses, §§ 21-301 to 21-333, 24-301 to 24-303.

## STATUTORY REFERENCE

See U. S. C., title 24, §§ 161-222.

## NOTES TO DECISIONS

CHARGES FOR INDIGENT AND DANGEROUSLY  
INSANE PERSONS

St. Elizabeths Hospital is a United States government institution, but under appropriate statutes indigent insane persons and insane persons of dangerous tendencies residing in the District of Columbia are admitted to its benefits, and the expense of their support and treatment is chargeable to the District of Columbia. *Fitzhugh v. District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 32-402 [16: 12]. Payment by Federal Treasury of part of expense from appropriations for District.

The expense of the indigent patients admitted to Saint Elizabeths Hospital from the District of Columbia shall be reported to the treasury department, and charged against the appropriations to be paid toward the expenses of the District by the general government, without regard to the date of their admission. (Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

## CROSS REFERENCE

See Compiler's Notes to § 32-401.

§ 32-403 [16: 12a]. Payments to superintendent to be credited to appropriations for care and maintenance of patients.

All sums paid to the superintendent of Saint Elizabeths Hospital for the care of patients that he is authorized by law to receive shall be deposited to the credit on the books of the Treasury Department of the appropriation made for the care and maintenance of the patients at Saint Elizabeths Hospital for the year in which the support, clothing, and treatment is provided, and be subject to requisition upon the approval of the Secretary of the Interior. (May 10, 1939, 53 Stat. 737, ch. 119, § 1; June 18, 1940, 54 Stat. —, ch. 395, § 1.)

## COMPILER'S NOTE

By Reorganization Plan No. IV, April 11, 1940, the functions relating to Saint Elizabeths Hospital were transferred from the Interior Department to the Federal Security Agency. See U. S. C., title 5, § 133t, note.

§ 32-404 [16: 13]. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

All collections or reimbursements on account of charges paid or payable by the District of Columbia for the care and support of the insane of said District at Saint Elizabeths Hospital shall be made to the commissioners of the District of Columbia and covered into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treas-



ury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 917, ch. 149; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

This act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCE

See notes to § 32-401.

§ 32-405 [16:13a]. Admission of indigent insane of District of Columbia—"Indigent insane person" defined.

All indigent insane persons residing in the District of Columbia at the time they became insane shall be entitled to the benefits of Saint Elizabeths Hospital. An indigent insane person within the meaning of this section shall be one who is insane and unable to support himself and family, or himself, if he has no family, under the visitation of insanity. (R. S., § 4844; Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

COMPILER'S NOTES

The words "Such indigent persons shall be admitted only upon order of the executive authority of the District of Columbia" should probably be included after the first sentence, in view of the act of March 3, 1877.

This section is in U. S. C., title 24, § 201, which provides for admissions upon authority of the Secretary of the Interior as set forth by R. S., § 4844, cited to the text. The later law, act March 3, 1877, although not cited as a source to the section in U. S. C., may have superseded R. S., § 4844 to that extent.

AMENDMENT

The act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCE

See notes to § 32-401.

§ 32-406 [16:14]. Private patients—Rate of board—Friends to comply with regulations.

Whenever there are vacancies, private patients from the District may be received at a rate of board to be determined by the visitors, to be in no case less than the actual cost of their support, and may remain until restored to reason.

The friends of the patient shall comply with the regulations of the hospital in respect to payment of board and in all other respects. (R. S., §§ 4853, 4854.)

STATUTORY REFERENCE

See U. S. C., title 24, § 204.

NOTES TO DECISIONS

EFFECTIVE DATE OF ACT

The provision that the committee or trustee of an insane person shall reimburse the District for care and expenses up to the time of appointment was intended to relate back to the date of the passage of the act. *Fitzhugh v. District of Columbia* (71 App. D. C. 290, 109 Fed. (2d) 837).

§ 32-407 [16:21]. Admission of insane convicts.

Any person becoming insane during the continuance of his sentence in the United States penitentiary shall have the same privilege of treatment in Saint Elizabeths Hospital during the continuance of his mental disorder as is granted in title 24, section 211 of the Code of Laws of the United States of America to persons who escape the consequences of criminal acts by reason of insanity, unless it be the opinion, both of the physician to the penitentiary and the

superintendent of the hospital, that such insane convict is so depraved and furious in his character as to render his custody in the hospital insecure, and his example pernicious. (R. S., § 4852; July 1, 1916, 39 Stat. 309, ch. 209, § 1.)

AMENDMENT

The act of 1916 changed the name of "Government Hospital for the Insane" to "Saint Elizabeths Hospital."

CROSS REFERENCES

See notes to § 32-401.

This section is in U. S. C., title 24, § 211a.

Chapter 5.—INDUSTRIAL HOME SCHOOL

Sec.

- 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.
- 32-502. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.
- 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.
- 32-504. Receipts from Industrial Home School for Colored Children—Credit.

§ 32-501 [8:41]. Control and management—Board of Public Welfare—Supplies—Disposition of income.

The Board of Public Welfare shall have complete and exclusive control and management of the Industrial Home School. All supplies for said school shall be obtained by requisition upon said commissioners, and all moneys received at said school as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said commissioners to be expended by them for the support of the school. (June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

COMPILER'S NOTE

The Industrial Home School was established as a "private benevolent charity," and incorporated under the general corporation laws of the District on May 5, 1870, according to "Charitable and Reformatory Institutions in the District of Columbia," by Dr. George M. Kober (Sen. Doc No. 207, 69th Congress, 2d Session, p. 244 et seq.).

AMENDMENT

The first sentence of this section is taken from the act of 1926, cited to the text, and the last sentence is from the original act of 1896. Prior to enactment of the 1926 act establishing the Board of Public Welfare, the act of 1923 abolished the Board of Trustees and transferred its powers to Board of Children's Guardians.

CROSS REFERENCES

Appointment of superintendent of Industrial Home School, § 3-107.

Powers and duties of Board of Public Welfare in general, § 3-101 et seq.

§ 32-502 [8:42]. Abolishment of Board of Trustees—Duties transferred to Board of Public Welfare.

Board of Children's Guardians, successors of trustees of the Industrial Home School of the District of Columbia, is abolished, and the powers and duties of such board as specified and restricted by law are transferred to the Board of Public Welfare. (Feb. 28, 1923, 42 Stat. 1361, ch. 148; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

AMENDMENT

This section is a composite of credits cited in the history line.



## CROSS REFERENCES

Officers, trustees, or directors may not deal with the institution for financial gain, § 32-1007.

See notes to § 32-501.

§ 32-503 [8: 43]. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of and adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Board of Commissioners of the District of Columbia are authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres: *Provided*, That the said Board of Commissioners are further authorized and empowered on behalf of the District of Columbia to utilize or sell, as they see fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (one-thousand-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of America: *Provided further*, That if utilized the land shall be used for school, playground, or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia: *Provided further*, That all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the District of Columbia and are made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School: *Provided further*, That the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: *And provided further*, That the said Board of Commissioners of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired another site and constructed suitable buildings

thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Board of Commissioners, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes. (Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2.)

## COMPILER'S NOTE

This section is partly executed and obsolete.

## CROSS REFERENCES

Execution of instruments generally, § 1-214

Office of Public Buildings and Parks has been abolished and its functions transferred to the National Park Service.

§ 32-504 [8: 44]. Receipts from Industrial Home School for Colored Children—Credit.

All moneys received at the Industrial Home School for Colored Children as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1292, ch. 314.)

## Chapter 6.—DISTRICT TRAINING SCHOOL

- Sec.
- 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.
  - 32-602. Control and supervision—Board of Public Welfare—Name.
  - 32-603. "Feeble-minded person" defined.
  - 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.
  - 32-605. Superintendent—Appointment and qualifications.
  - 32-606. Sale of products—Disposition of proceeds.
  - 32-607. Persons received—Age limit.
  - 32-608. Petition to district court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.
  - 32-609. Summons—Contents—Return day—Service—Cause heard without answer.
  - 32-610. Appointment of physicians to examine feeble-minded person—Qualifications—Certificates to be made only after personal examination.
  - 32-611. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.
  - 32-612. Hearing—Continuances—Proof to be taken—Jury trial.
  - 32-613. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.
  - 32-614. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.
  - 32-615. Liability of estate of public patient for maintenance.
  - 32-616. Proceedings to charge relatives legally responsible for maintenance of public patient—Board of Public Welfare to collect payments for maintenance—Enforcement of order.
  - 32-617. Public patients may become private patients by filing bond and paying advance.
  - 32-618. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.
  - 32-619. Violating any provision of this chapter—Conniving to procure improper commitments—Misdemeanor—Penalty.
  - 32-620. Proceeding when child brought before juvenile court appears feeble-minded.
  - 32-621. Upon conviction of crime, court may order inquiry hereunder—Procedure.



- Sec.  
 32-622. Transfer to St. Elizabeths Hospital when patient becomes insane.  
 32-623. Separate docket of feeble-minded cases.  
 32-624. Transfer of feeble-minded from National Training Schools for Boys or Girls.  
 32-625. Removal from school of nonresidents of the District of Columbia.  
 32-626. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.  
 32-627. Citation, order, or process on inmates to be served only by superintendent.  
 32-628. Contracts of inmates to be first approved by District Court.  
 32-629. Invalidity of any part not to affect remainder of chapter.

§ 32-601 [8: 51]. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.

The commissioners of the District of Columbia are authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school for feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the commissioners of the District of Columbia as agents of the United States. The persons to be admissible to said home and school and the proceedings with reference to securing such admission to be in accordance with law. (Feb. 28, 1923, 42 Stat. 1360, ch. 148.)

§ 32-602 [8: 52]. Control and supervision—Board of Public Welfare—Name.

The institution for the custody, care, education, training, and treatment of feeble-minded persons, established by section 32-601, shall be under the control and supervision of the Board of Public Welfare of the District, and shall be known as the District Training School. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

#### AMENDMENT

The act of 1926 transferred the powers and duties of the Board of Charities of the District of Columbia to the Board of Public Welfare.

#### CROSS REFERENCES

General provisions concerning powers and duties of Board of Public Welfare, § 3-101 et seq.  
 Officers, trustees, or directors may not deal with the institution for financial gain, § 32-1007.

§ 32-603 [8: 53]. "Feeble-minded person" defined.

The words "feeble-minded persons" in this chapter shall be construed to mean any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, or being taught to do so, and who requires supervision, control, and care for his own welfare, or for the welfare of others, or for the welfare of the community, and is not insane or of unsound mind to such an extent as to require his commitment to Saint Elizabeths Hospital, as provided by title 24, chapter 4, of the Code of Laws of the United States of America, or other

laws in effect on March 3, 1925, with respect to the commitment and custody of insane persons. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 2.)

#### CROSS REFERENCE

Other provisions concerning incompetent persons, see title 21.

§ 32-604 [8: 54]. Rules and regulations to be prescribed—Annual reports—Inventory.

The Board of Public Welfare shall make all necessary rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the inmates of said institution. The said board shall make annually to the Commissioners of the District of Columbia a report for the preceding fiscal year ending the 30th day of June. Said report shall show for such period the number and names of the superintendent, officers, teachers, and all other regular employees, and the salaries paid to each, and what, if any, other emoluments are allowed and to whom. Said board shall also cause a full and accurate inventory to be taken at the close of each fiscal year, showing the number of acres of land and the value thereof, the number, kind, and value of buildings, the various kinds of personal property and the value thereof, and a copy of said inventory, duly verified on oath by the officer making said inventory, shall accompany said report. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 3; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

#### CROSS REFERENCES

Powers and duties of Board of Public Welfare, § 3-101 et seq.  
 Rules and regulations generally, § 1-226 and notes.

§ 32-605 [8: 55]. Superintendent — Appointment and qualifications.

The Board of Public Welfare shall appoint a superintendent, who shall be experienced in the care, training, and treatment of the feeble-minded. He shall be the chief executive officer of the institution and may be removed by the commissioners of the District of Columbia upon recommendation of the board. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 4; Mar. 16, 1926, 44 Stat. 208, 209, ch. 58, §§ 1, 2, and 5.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and Board of Public Welfare was substituted therefor.

#### CROSS REFERENCE

Other provisions giving Board of Public Welfare power to appoint superintendent, § 3-107.

§ 32-606 [8: 56]. Sale of products—Disposition of proceeds.

The superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the treasury of the United States to the credit of the District of Columbia. (Mar. 3, 1925, 43



Stat. 1135, ch. 460, § 5; Mar. 3, 1925, 43 Stat. 1216, ch. 477; May 10, 1926, 44 Stat. 417, ch. 276; Mar. 2, 1927, 44 Stat. 1297, ch. 271; May 21, 1928, 45 Stat. 645, ch. 659.)

#### COMPILER'S NOTES

This section as originally enacted provided that the funds from sale of produce should be paid into the Treasury "to the credit of the United States and the District of Columbia in the proportion required by law." The several appropriation acts cited in the history line provide for crediting of such income wholly to the United States.

The act of June 29, 1922, 42 Stat. 668, ch. 249 (title 20, § 670a of the 1929 Code, Supp. V), formed the basis for various sections of the code which provide for the 60% payment by the District of certain expenses, was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to the act of August 17, 1937, 50 Stat. 673, ch. 690. This repealing act does not provide any substitute provision, and consequently the aforesaid sections are left without foundation in the statutes. The aforesaid 1922 act, p. 671, contains a provision repealing all prior inconsistent acts, and, therefore, the prior acts which were the bases for these various sections no longer apply.

#### § 32-607 [8: 57]. Persons received—Age limit.

There shall be received into the said institution, subject to such rules and regulations as the Board of Public Welfare may adopt and pursuant to the provisions of this chapter, feeble-minded persons of not more than forty-five years of age. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 6; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1 and 2.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

#### CROSS REFERENCES

Other provisions for admission of feeble-minded persons, § 31-1009.

Powers and duties of the Board of Public Welfare generally, § 3-101 et seq.

#### § 32-608 [8: 58]. Petition to District Court by guardian, relative, or reputable citizen, for admission of feeble-minded person—Contents of petition—Verification—Notice—Process.

When any person who is a resident of the District of Columbia shall be supposed to be feeble-minded his guardian, or any relative, or any reputable citizen of the District of Columbia may file with the clerk of the District Court of the United States for the District of Columbia a petition, in writing, setting forth that the person therein named is feeble-minded, and such other facts as are necessary to bring such person within the purview of this chapter; also the name and residence of some person, if any there be, actually supervising, caring for, or supporting such person and of at least one person, if any there be, legally chargeable with such supervision, care, or support, or that such names and residence are unknown to the petitioner, and also the names and residences, or that the same are unknown, of the parents or guardians.

The petition shall also allege whether or not such person has been examined by a qualified physician having personal knowledge of the condition of such alleged feeble-minded person. There shall be indorsed on such petition the names and residences of witnesses known to the petitioner, by whom the truth of the allegations of the petition may be proved, as well as the name and residence of a qualified

physician, if any is known to the petitioner, having personal knowledge of the case.

All persons named in such petition or whose names are indorsed thereon shall be notified of such proceedings by proper summons issued by the clerk of said court. The petition shall be verified by affidavit, which shall be sufficient if it states that it is based upon information and belief. Process shall be issued against such persons as are mentioned in the petition but whose names are unknown to the petitioner, by the designation "To all whom it may concern," and such designation and notice shall be sufficient to authorize the court to hear and determine the proceedings as though the parties had been summoned by their proper names. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 7.)

#### CROSS REFERENCE

Insanity inquests, § 21-306 et seq.

#### RULES OF CIVIL PROCEDURE

These rules do not apply to lunacy proceedings, Rule 81 (a) (1).

#### § 32-609 [8: 59]. Summons—Contents—Return day—Service—Cause heard without answer.

The summons shall require all persons upon whom served to personally appear at the time and place stated therein and to bring into court the alleged feeble-minded person. No written answer shall be required to the petition, but the cause shall stand for hearing upon the petition on the return day of the summons. The summons shall be made returnable at any time within twenty days after the date thereof. No service of process shall be necessary upon any of the persons named in the petition or whose names are indorsed thereon if they appear or are brought before the court personally without service of summons. Summons in proceedings hereunder may be served by any officer authorized by law to serve processes of the District Court of the United States for the District of Columbia. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 8.)

#### CROSS REFERENCE

See notes to § 32-608.

#### § 32-610 [8: 60]. Appointment of physicians to examine feeble-minded person—Qualifications—Certificates to be made only after personal examination.

Upon the filing of such petition the court shall appoint two physicians, at least one of whom shall be skilled in the diagnosis and treatment of mental diseases to make an examination of the alleged feeble-minded person to determine his mental and physical condition, and their certificate shall be filed with the court on or before the hearing on the petition. The persons so appointed are empowered to go where such alleged feeble-minded person may be and make such personal examination of him as will enable them to offer an opinion as to his physical and mental condition, and no certificate shall be made by them except after such examination. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 9.)

#### CROSS REFERENCE

See notes to § 32-608.



**§ 32-611 [8: 61]. Warrant to take custody of feeble-minded person before hearing—Detention pending hearing—Place of detention.**

Upon the filing of the petition, or upon motion at any time thereafter, if it shall be made to appear to the court by evidence given under oath that it is for the best interest of the alleged feeble-minded person or of other persons or of the community that such person be at once taken into custody, or that the service of summons will be ineffectual to secure the presence of such person, a warrant may issue on the order of the court directing that such person be taken into custody and brought before the court forthwith or at such time and place as the judge may appoint, and, pending the hearing of the petition, the court may make any order for the detention of such feeble-minded person, or the placing of such feeble-minded person under temporary guardianship of some suitable person, on such person entering into a recognizance for his appearance, as the court shall deem proper. But no such alleged feeble-minded person shall, during the pendency of the hearing of the petition, be detained in any place provided for the detention of persons charged with or convicted of any criminal or quasi-criminal offense. (Mar. 3, 1925, 43 Stat. 1136, ch. 460, § 10.)

#### CROSS REFERENCE

See notes to § 32-608.

**§ 32-612 [8: 62]. Hearing—Continuances—Proof to be taken—Jury trial.**

At any time after the filing of the petition and pending the final disposition of the case the court may continue the hearing from time to time. The court shall in all cases take proofs as to the financial circumstances of the patient and his relatives legally liable for his support, and shall take proofs as to the alleged condition of such person and his personal and family history, and shall fully investigate the facts before making an order, and if no jury is required the court shall determine the question of whether such person is a feeble-minded person. If the court shall deem it necessary, or if such alleged feeble-minded person or any relative or any person with whom he may reside shall so demand, a jury shall be summoned to determine the question of whether such person is feeble-minded. Such jury shall be selected from the jurors in attendance upon the court or a special jury may be summoned to determine such question. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 11.)

#### CROSS REFERENCE

See notes to § 32-608.

**§ 32-613 [8: 63]. Dismissal and discharge if not feeble-minded—Decree placing person in institution if feeble-minded—Controlling purpose of proceedings.**

If the court or the jury shall find such alleged feeble-minded person not to be feeble-minded as defined in this chapter, he shall order the petition dismissed and the person discharged. If the court shall find such alleged feeble-minded person to be feeble-minded and subject to be dealt with under this chapter, having due regard to all the circumstances appearing on the hearing, the guiding and controlling thought throughout the proceedings to

be the welfare of the feeble-minded person and the welfare of the community, the court shall enter a decree directing that such feeble-minded person be placed in the said institution, and such decree so entered shall stand and continue binding upon all persons whom it may concern until rescinded or otherwise regularly superseded or set aside. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 12.)

#### CROSS REFERENCE

See notes to § 32-608.

**§ 32-614 [8: 64]. Private and public patients—Bond for support and maintenance—Sufficiency and justification of sureties.**

If at the time of or before the making of such order a bond in the penal sum of \$1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, running to the United States and conditioned for the payment of the support and maintenance of the patient in the manner prescribed by law, shall be delivered to the court, together with the sum of \$50 as an advance payment toward the support of such patient, admission shall be ordered as a private patient, otherwise as a public patient. Such bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the superintendent of the institution. Until such bond and advance payment are delivered to the superintendent the person shall be admitted to the home and training school only as a public patient. At the request of the superintendent, the court shall require the sureties on such bond to justify their responsibility anew or order that a new bond be given in place of the original, which justification or new bond shall be transmitted to the superintendent, and unless such justification or bond shall be delivered to the superintendent within thirty days the patient shall from the time of such request be regarded as a public patient. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 13.)

#### CROSS REFERENCE

See notes to § 32-608.

**§ 32-615 [8: 65]. Liability of estate of public patient for maintenance.**

If the order for admission is as a public patient and it shall appear from the proofs taken in writing as aforesaid that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall direct in its order of admission the payment out of such estate of the whole or such part of the cost of maintenance of said patient at said institution as it shall deem just, regard being had for the needs of those having a legal right to support out of said estate, which said order shall remain in full force and effect until modified by proceedings under section 32-621, or until the patient shall be discharged from said institution, and the court committing such patient shall be notified of such discharge. (Mar. 3, 1925, 43 Stat. 1137, ch. 460, § 14.)

#### CROSS REFERENCE

See notes to § 32-608.



§ 32-616 [8:66]. Proceedings to charge relatives legally responsible for maintenance of public patient—Board of Public Welfare to collect payments for maintenance—Enforcement of order.

If the order for admission is as a public patient and the court finds that the patient has not an estate out of which the government may be fully reimbursed for his maintenance, and if it appears that there are relatives who are legally liable for his support, the court shall issue to such relatives a citation to show cause why they should not be adjudged to pay a portion or all of the expense of maintenance of such patient in the said institution. The citation shall be served at least ten days before the hearing on said citation. If it shall, upon such hearing, appear to the court that such patient has not sufficient estate out of which the government may properly be fully reimbursed and that he has relatives who are parties to the proceedings and who are legally liable for his support, and who are able to contribute thereto, the court may make an order requiring payment by such relatives of such sum or sums as it may find they are reasonably able to pay and as may be necessary to reimburse the government for the maintenance of such patient. Said order shall require the payment of such sums to the Board of Public Welfare annually, semiannually, or quarterly as the court may direct. It shall be the duty of the board to collect the said sums due under sections 32-614 and 32-615 and under this section, and to turn the same into the treasury of the United States to the credit of the District of Columbia and the United States in proportion required by law. Any such order may be enforced against any property of the feeble-minded person or of the person liable or undertaking to maintain him in the same way as if it were a judgment or decree for temporary alimony in a divorce case. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 15; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

#### CROSS REFERENCE

See notes to § 32-608.

§ 32-617 [8:67]. Public patients may become private patients by filing bond and paying advance.

If any person shall be admitted as a public patient, his order for admission may be changed to that of a private patient by executing and delivering to the court the bond and advance payment for his support mentioned in section 32-615. Thereupon the court shall make an order changing the admission of said person from a public to a private patient. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 16.)

#### CROSS REFERENCE

See notes to § 32-608.

§ 32-618 [8:68]. Restrictions on discharge—Petition for discharge—Causes for discharge—Superintendent to be notified—Notice of variation of order—Denial of one petition not a bar to another.

No feeble-minded person admitted to the said institution pursuant to an order of court as herein provided shall be discharged therefrom except as herein provided, except that nothing herein contained shall abridge the right of petition for the writ of habeas

corpus. At any time after the admission of the feeble-minded person pursuant to an order of court as herein provided, any of the relatives or friends of the feeble-minded person, or any reputable citizen, or the superintendent of the institution having the feeble-minded person in charge, or the Board of Public Welfare, may petition the court that entered the order of admission to discharge the feeble-minded person, or to vary the order of the court sending the feeble-minded person to the institution. If on the hearing of the petition the court is satisfied that the welfare of the feeble-minded person or the welfare of others or the welfare of the community requires his discharge or a variation of the order, the court may enter such order of discharge or variation as the court thinks proper. Discharges and variations of orders may be made for either of the following causes: Because the person adjudged to be feeble-minded is not feeble-minded; because he has so far improved as to be capable of caring for himself; because the relatives or friends of the feeble-minded person are able and willing to supervise, control, care for, and support him, and request his discharge, and in the judgment of the superintendent of the institution having the person in charge no evil consequences are likely to follow such discharge; but the enumeration of grounds of discharge or variation herein shall not exclude other grounds of discharge or variation which the court, in its discretion, may deem adequate, having due regard for the welfare of the person concerned or the welfare of others or the welfare of the community. On any petition of discharge or variation the court may discharge the feeble-minded person from all supervision, control, and care, or make such variation of the order as to maintenance as the court thinks fit under all the circumstances appearing on the hearing of the petition. The superintendent of the institution having the feeble-minded person in charge must be notified of the time and place of hearing on any petition for discharge or variation, as the court shall direct, and no order of discharge or variation shall be entered without giving such superintendent a reasonable opportunity to be heard; and the court may notify such other persons, relatives, and friends of the feeble-minded person as the court may think proper of the time and place of the hearing on any petition for discharge or variation of prior order. No person shall be charged with any greater degree of financial responsibility for the support of such feeble-minded person by variation of the order as to maintenance without notice and a reasonable opportunity to be heard. The denial of one petition for discharge or variation shall be no bar to another on the same or different grounds within a reasonable time thereafter, such reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petition for discharge or variation of prior order. (Mar. 3, 1925, 43 Stat. 1138, ch. 460, § 17; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

#### CROSS REFERENCE

See notes to § 32-608.



§ 32-619 [8: 69]. Violating any provision of this chapter—Conniving to procure improper commitments—Misdemeanor—Penalty.

Any person who shall knowingly contrive or who shall conspire to have any person adjudged feeble-minded under this chapter, unlawfully and improperly, or any person who shall violate any provision of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding \$1,000, or imprisoned not exceeding one year, or both, in the discretion of the court in which such conviction is had. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 18.)

## CROSS REFERENCE

See notes to § 32-603.

§ 32-620 [8: 70]. Proceeding when child brought before juvenile court appears feeble-minded.

When a child is brought before the juvenile court of the District of Columbia as a dependent or delinquent child, if it appears to the court, on the testimony of a physician or psychologist or other evidence, that such person or child is feeble-minded within the meaning of this chapter the court may adjourn the proceedings and direct some suitable officer of the court or other suitable reputable person to file a petition under this chapter; and the court may order that pending the preparation, filing, and hearing of such petition the person or child be detained in a place of safety or be placed under the guardianship of some suitable person on that person entering into recognizance for his appearance. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 19.)

## CROSS REFERENCE

See notes to § 32-603.

§ 32-621 [8: 71]. Upon conviction of crime, court may order inquiry hereunder—Procedure.

On the conviction by a court of record of competent jurisdiction of any person of any crime, misdemeanor, or any violation of any ordinance which is in whole or in part a violation of any statute of the District of Columbia, the court, if satisfied on the testimony of a physician or a psychologist or other evidence that the person or child is feeble-minded within the meaning of this chapter, may suspend sentence, or suspend entering an order sending the child to a reformatory, training, or industrial school, and direct that a petition be filed under this chapter. When the court directs a petition to be filed it may order that, pending the preparation, filing and hearing of the petition, the person or child be detained in a place of safety, or be placed under the guardianship of any suitable person on that person entering into a recognizance for his appearance. If upon the hearing of said petition or upon any subsequent hearing under this chapter the person is found not to be feeble-minded, the court shall impose sentence. (Mar. 3, 1925, 43 Stat. 1139, ch. 460, § 20.)

## CROSS REFERENCE

See notes to § 32-603.

§ 32-622 [8: 72]. Transfer to St. Elizabeths Hospital when patient becomes insane.

When any person shall become insane while confined in said institution and the superintendent shall

certify in writing that such patient is insane and is not a fit subject for care and maintenance at said institution, the said District Court shall issue an order for his admission to Saint Elizabeths Hospital. Such transfer shall not affect the liability on any bond for private support, or any order for reimbursement for public support, but all such bonds and orders for reimbursement shall be liable and in full force for the cost of maintenance at the said asylum. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 21.)

§ 32-623 [8: 73]. Separate docket of feeble-minded cases.

The District Court of the United States for the District of Columbia shall keep a separate docket of proceedings in feeble-mindedness, upon which shall be made such entries as will, together with the papers filed, preserve a complete and perfect record of each case, the original petitions, writs, and returns made thereto and the reports of commissions shall be filed with the clerk of the court. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 22.)

§ 32-624 [8: 74]. Transfer of feeble-minded from National Training Schools for Boys or Girls.

Whenever the superintendent of the National Training School for Boys or of the National Training School for Girls shall certify to the said court that in his opinion any inmate thereof has become or is feeble-minded, the court shall permit such superintendent or any other reputable citizen of the District of Columbia to file a petition as provided in section 32-610. If such inmate shall be found and adjudged to be feeble-minded, the court shall immediately issue an order for his admission as a public patient to the District Training School. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 23.)

§ 32-625 [8: 75]. Removal from school of nonresidents of the District of Columbia.

The District Training School is intended for the benefit of bona fide residents of the District of Columbia. The Board of Public Welfare shall cause any person who has been admitted, but who has not acquired a legal residence in the District, to be removed as soon as possible to the state in which he belongs. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 24; Mar. 16, 1926, 44 Stat. 208, ch. 58, § 1, 2.)

## AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32-626 [8: 76]. Paroles may be granted—Conditions—Expense—Discretion of Superintendent—Violation—Return.

It shall be within the discretion of the superintendent, under general conditions prescribed by the Board of Public Welfare, to grant paroles to patients where the conditions in the homes in which they are to reside are satisfactory and where such paroles are deemed by the superintendent as not injurious to the interest of the patients or the public. The expense of such a vacation shall in every case be borne by the guardian, relatives, or other persons responsible for the care of such patient while on such vacation. It shall be within the discretion of the superintendent



to grant a parole for an indefinite period to a patient who has improved sufficiently to warrant such opportunity and when satisfactory supervision for such patient while on such leave is assured. If the conditions of any parole granted under this chapter are violated, the patient may be taken up and returned the same as an escaped patient. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 25; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

#### AMENDMENT

The act of 1926 abolished the Board of Charities of the District of Columbia and substituted the Board of Public Welfare.

§ 32-627 [8: 77]. Citation, order, or process on inmates to be served only by Superintendent.

Any citation, order, or process required by law to be served on an inmate of the institution shall be served only by the superintendent or by some one designated in writing by him. Return thereof to the court from which the same issued may be made by the person making such service and such service and return shall have the same force and effect as if it had been made by the United States marshal of the District of Columbia or by the sheriff of the county in which the institution is located. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 26.)

§ 32-628 [8: 78]. Contracts of inmates to be first approved by District Court.

No public or private patient in said institution shall be allowed to execute any contract, deed, will, or other instrument unless such execution shall have first been allowed and approved by an order to be entered of record by the said District Court of the United States for the District of Columbia, and a certified copy of such order shall be furnished to the superintendent at the time of the execution of such instrument. Such order of the court shall be evidence only of the capacity of such patient to make such instrument. (Mar. 3, 1925, 43 Stat. 1140, ch. 460, § 27.)

§ 32-629 [8: 79]. Invalidity of any part not to affect remainder of chapter.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part. (Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28.)

### Chapter 7.—HOME CARE FOR DEPENDENT CHILDREN

#### Sec.

- 32-701. Dependent children—Application to Board of Public Welfare when parent is unable to furnish home care—Residence and citizenship required.
- 32-702. Investigation by the board—Information to be secured.
- 32-703. Finding of the board—Order for monthly allowance to maintain child at home—Conditions—Discontinuance.
- 32-704. Allowance—Duration—Review—Alteration of conditions—Notice.
- 32-705. Visitation by representative of board.
- 32-706. Records to be kept by board.
- 32-707. Board to make rules and regulations.
- 32-708. Obtaining or receiving allowance by false representations, fraud, or deceit—Penalty.
- 32-709. Construction of "child" and "parent" to include plural.

#### Sec.

- 32-710. Annual estimates to be submitted—Appointment of supervisor, investigators, and employees—Salaries—Removal.

§ 32-701 [8: 91]. Dependent children—Application to Board of Public Welfare when parent is unable to furnish home care—Residence and citizenship required.

Whenever the parent of a child under the age of sixteen years is unable to provide for the proper care of such child in his own home, the mother or guardian of such child may make application to the Board of Public Welfare, hereinafter called the board, for the benefits conferred by this chapter, which application shall be referred to a standing subcommittee of the board, at least one of whom shall be a woman: *Provided*, That such applicant has been a bona fide resident of the District of Columbia for one year preceding such application and that she is a citizen of the United States or has made application to become a citizen. (June 22, 1926, 44 Stat. 758, ch. 647, § 1.)

#### CROSS REFERENCE

General provisions concerning powers and duties of Board of Public Welfare, § 3-101 et seq.

#### NOTES TO DECISIONS

##### GRANT OF LAND IN WILL

Grant of land in will for purpose of establishing a hospital for foundlings, for which the act of April 22, ch. 61, 16 Stat. 92 was enacted, was valid. *Ould v. Washington Hosp. for Foundlings* (95 U. S. 303, 24 L. Ed. 450).

§ 32-702 [8: 92]. Investigation by the board—Information to be secured.

The board shall thereupon make an investigation for the purpose of securing the following information:

- a. Whether the mother or guardian is a proper person to have the custody and care of the child.
- b. Whether the home is a satisfactory place for the training and rearing of the child.
- c. What resources may be available for the complete or partial maintenance of the child, including the full amount, if any, of real and personal property owned by the parent or held in trust for the child; whether there are any persons or organizations legally obligated to assist in the support of the child.
- d. Whether legal steps have been taken to compel the father of the child, if he be living, to provide support when he willfully refuses to do so and with what result.
- e. What amount of aid is needed to keep the child in its own home and to provide proper care. (June 22, 1926, 44 Stat. 759, ch. 647, § 2.)

§ 32-703 [8: 93]. Finding of the board—Order for monthly allowance to maintain child at home—Conditions—Discontinuance.

The board shall make written findings based upon its investigations. If it shall find affirmatively on subsections a, b, and d of section 32-702, and further that the income from, or the amount of, real and personal property owned by the parent or held in trust for the child, if any, is not of an amount or character which makes the giving of public aid inappropriate or unnecessary, the board may then make



an order for a monthly allowance sufficient to insure the proper maintenance of the child in the home with the mother and, if it deems necessary, may impose such conditions upon the granting of the allowance as will promote the welfare of the child. The allowance shall be discontinued whenever the mother ceases to be a resident of the District of Columbia. (June 22, 1926, 44 Stat. 759, ch. 647, § 3.)

**§ 32-704 [8: 94]. Allowance—Duration — Review — Alteration of conditions—Notice.**

The board may award an allowance from month to month or for a continuous period. It shall review all allowances at regular intervals and in no case shall an allowance be continued for more than six months without such review. Any allowance may be increased or decreased in amount, or discontinued, and the board may alter or amend the conditions upon which the allowance was previously granted upon a showing that the welfare of the child and the protection of the public interest demands such change, discontinuance, or amendment after reasonable notice has been given to the mother of the child. (June 22, 1926, 44 Stat. 759, ch. 647, § 4.)

**§ 32-705 [8: 95]. Visitation by representative of board.**

The board shall cause every home for which an allowance is made to be visited by its representatives as often as may be necessary to observe the conditions which obtain in the home, the care which the child is receiving, and to offer such friendly counsel and advice as may be helpful to the mother and the child. (June 22, 1926, 44 Stat. 759, ch. 647, § 5.)

**§ 32-706 [8: 96]. Records to be kept by board.**

The board shall keep on file a full record of each applicant for, or recipient of, assistance under this chapter, including the reports of investigations, correspondence and other pertinent information, together with the orders of the board in each case. (June 22, 1926, 44 Stat. 759, ch. 647, § 6.)

**§ 32-707 [8: 97]. Board to make rules and regulations.**

The board shall make such reasonable rules and regulations as may be necessary to the proper administration of this chapter. (June 22, 1926, 44 Stat. 759, ch. 647, § 7.)

**CROSS REFERENCE**

Rules and regulations generally, § 1-226 and notes.

**§ 32-708 [8: 98]. Obtaining or receiving allowance by false representations, fraud, or deceit—Penalty.**

Any person who attempts to obtain, or obtains, by false representations, fraud, or deceit, any allowance under this chapter, or who receives any allowance knowing it to have been fraudulently obtained, or who aids or assists any person in obtaining or attempting to obtain an allowance by fraud, shall be punished by a fine of not more than \$200 or imprisonment for not more than twelve months, or both. (June 22, 1926, 44 Stat. 759, ch. 647, § 8.)

**§ 32-709 [8: 99]. Construction of "child" and "parent" to include plural.**

The words "child" and "parent" where used in this chapter shall be interpreted to include the plural. (June 22, 1926, 44 Stat. 760, ch. 647, § 9.)

**§ 32-710 [8: 100]. Annual estimates to be submitted—Appointment of supervisor, investigators, and employees—Salaries—Removal.**

The commissioners of the District of Columbia shall include annually in the estimates of appropriations for said District such amount as may be necessary for the purpose of carrying out this chapter. The commissioners of the District of Columbia, upon nomination by the board, shall have power to appoint a supervisor, and such investigators, stenographers, and clerical assistants as are necessary to administer this chapter, at such salaries as may be fixed for similar services by the provisions of the Classification Act of 1923 (U. S. C., title 5, § 673). Such employees may be removed by the commissioners upon recommendation of the board. (June 22, 1926, 44 Stat. 760, ch. 647, § 10.)

**Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS**

**Sec.**

- 32-801. Name.
- 32-802. Board of Trustees—Appointment—President.
- 32-803. One commissioner of District to be trustee.
- 32-804. Two consulting trustees.
- 32-805. Corporate capacity and powers of board.
- 32-806. Bylaws, rules, and regulations.
- 32-807. Contracts and purchases—President of board its executive officer—Annual reports.
- 32-808. Superintendent and other employees—Appointment—Compensation.
- 32-809. Treasurer—Bond—Duties.
- 32-810. Superintendent's bond.
- 32-811. Powers and duties of superintendent and subordinate officers.
- 32-812. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examinations of school and accounts.
- 32-813. Report by officers to commissioners of District—Contents.
- 32-814. Disposition of proceeds of farm and shops.
- 32-815. Boys committed—Commitment by court or judge.
- 32-816. Period of detention.
- 32-817. Number of boys limited to number that can be properly accommodated—Notice to court.
- 32-818. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.
- 32-819. Employment and instruction of boys—Apprenticing—Indentures.
- 32-820. Release on parole of juvenile offenders committed.
- 32-821. Board of Trustees authorized to parole—Attorney General.
- 32-822. Support of boys committed—Accounts—Payment—Rate.

**§ 32-801 [8: 171]. Name.**

The reform school of the District of Columbia shall be known and designated as the National Training School for Boys. (May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

**CROSS REFERENCE**

Application of provisions of this chapter to National Training School for Girls, § 32-907.

**§ 32-802 [8: 172]. Board of trustees—Appointment—President.**

The National Training School for Boys shall be in the charge of, and governed and managed by, a board



of seven trustees, who shall be appointed by the President of the United States, upon the recommendation of the Attorney General, each for the term of three years, but in such a manner that the terms of not more than three of them shall expire within any one or the same year. One of the trustees shall be elected president of the board, whose duty shall be prescribed by the board. (May 3, 1876, 19 Stat. 49, ch. 90, § 1; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

#### COMPILER'S NOTE

By Reorganization Plan No. II, May 9, 1939, the Board of Trustees of the National Training School for Boys was abolished and its functions transferred to the Department of Justice to be administered by the Director of the Bureau of Prisons. See U. S. C., title 5, § 133t, note.

#### AMENDMENT

The act of 1908 changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

§ 32-803 [8: 173]. One Commissioner of District to be trustee.

One of the commissioners of the District of Columbia, to be selected by the Board of Commissioners, shall be a trustee, with all the powers, privileges, and duties of other trustees of said school. (June 4, 1880, 21 Stat. 156, ch. 121, § 1.)

§ 32-804 [8: 174]. Two consulting trustees.

Two consulting trustees shall be appointed, namely, one Senator of the United States, by the Presiding Officer of the Senate, for the term of four years, and one Member of the House of Representatives, by the Speaker thereof, for the term of two years. (May 3, 1876, 19 Stat. 52, ch. 90, § 16.)

#### CROSS REFERENCE

Other provisions concerning term of office, § 32-1004.

§ 32-805 [8: 175]. Corporate capacity and powers of board.

The board of trustees shall be a corporation by the name of the "Board of Trustees of the National Training School for Boys," for the purpose of taking and holding, in trust for the United States property of every description which has been purchased, appropriated, or set apart for the use of the institution, or which may hereafter be purchased, appropriated, or set apart for its use, or given or bequeathed to it, or to the said board, for its use, with all power necessary to carry this purpose into effect, and to protect and preserve such property, including the land and buildings, fences, stock, fruit, crops, and trees of all kinds. (May 3, 1876, 19 Stat. 49, ch. 90, § 2; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

#### AMENDMENT

The act of 1908 changed the name of the Reform School of the District of Columbia to the National Training School for Boys.

#### CROSS REFERENCE

Officers, trustees or directors may not deal with institution for financial gain, § 32-1007.

§ 32-806 [8: 176]. Bylaws, rules, and regulations.

The Board of Trustees may make such by-laws, rules, and regulations for their own government and that of the institution, its officers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all boys committed to the school,

as they may deem necessary and proper, and as are not contrary to the Constitution and to the laws of the District of Columbia. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; June 5, 1900, 31 Stat. 267, ch. 715.)

#### AMENDMENT

The act of 1876 read as follows: "That the board of trustees may make such by-laws, rules and regulations for their own and the government of the institution, its officers, employees, and inmates, as they may deem necessary and proper."

#### CROSS REFERENCES

Employment or apprenticing prisoners, § 32-819.

General provisions concerning imprisonment of criminals do not apply to National Training School for Boys, § 24-402.

Rules and regulations generally, § 1-226.

Transfer of feeble-minded to District Training School, § 32-624.

§ 32-807 [8: 177]. Contracts and purchases—President of board its executive officer—Annual reports.

All contracts and purchases made for or on account of the school shall be made in the name of the board and by whomsoever the board may direct. The president of the board shall be its executive officer, and it shall be his duty to make an annual report to the Attorney General, to be accompanied by the annual report of the superintendent and treasurer. (May 3, 1876, 19 Stat. 51, ch. 90, § 14.)

§ 32-808 [8: 178]. Superintendent and other employees—Appointment—Compensation.

The Board of Trustees may appoint a superintendent, two or more teachers or assistants, and a matron whose salaries are fixed by law; they may also employ two or more master mechanics, a farmer, a gardener, and such other persons, as servants and laborers, as may be necessary, and fix their compensation, subject to the approval of the Attorney General. (May 3, 1876, 19 Stat. 49, ch. 90, § 3.)

§ 32-809 [8: 179]. Treasurer—Bond—Duties.

The Board of Trustees shall appoint a treasurer, who shall, before entering upon the duties of his office, give a bond to the United States with two or more sureties, to be approved by the General Accounting Office, in the sum of \$20,000, or a larger sum, at the option of the said General Accounting Office, conditioned that he shall faithfully account for all the money received by him as treasurer; and it shall be his duty to keep a clear and full record of his accounts as treasurer, and report an abstract of the same to the Board of Trustees once in every two months, and shall also make an annual report to the Board of Trustees. (May 3, 1876, 19 Stat. 49, ch. 90, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

#### AMENDMENT

The act of 1921 provided that the bond be approved by the General Accounting Office instead of the First Comptroller of the Treasury.

§ 32-810 [8: 180]. Superintendent's bond.

Before entering upon the duties of his office, the superintendent shall give a bond to the Board of Trustees, with sureties, to be approved by the Attorney General of the United States, in the sum of \$3,000, conditioned that he shall faithfully account for all money received by him, and faithfully perform all the duties incumbent on him as superintendent



of said school. (May 3, 1876, 19 Stat. 50, ch. 90, § 5.)

§ 32-811 [8: 181]. Powers and duties of superintendent and subordinate officers.

The superintendent shall reside at the institution constantly and he, with such subordinate officers as may be appointed in accordance with section 32-808, shall have the charge and custody of the boys; shall govern them in accordance with such rules and regulations as the Board of Trustees may prescribe in its by-laws; shall employ them in agricultural, mechanical or other labor; shall give them instruction in reading, writing, arithmetic, geography, and such other studies and in such arts and trades as the trustees may direct; and shall employ such methods of discipline as will, as far as possible, reform their characters, preserve their health, promote regular improvement in their studies and employments, and secure in them fixed habits of religion, morality, and industry. (May 3, 1876, 19 Stat. 50, ch. 90, § 6.)

§ 32-812 [8: 182]. Superintendent—In charge of lands and other property—Books of account—Register of boys—Examinations of school and accounts.

The superintendent shall have charge of the lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining to the institution, within the precincts thereof, under the Board of Trustees, including the farm in possession of the board where the school was first located; and he shall keep in suitable books, regular and complete accounts of all his receipts and expenditures, and of all the property intrusted to him, so as to show clearly the income and expenses of the institution; and he shall account, in such manner as the trustees may prescribe, for all the money received by him from the proceeds of the institution or otherwise; and he shall keep a register of the names and ages of all boys committed to the institution, with the dates of their admission and discharge, and such particulars of their history before and after leaving the institution as he can obtain.

His books and all documents relating to the school shall at all times, be open to the inspection of the trustees, who shall, once or more in every month, carefully examine his accounts, and the vouchers and documents connected therewith, and make a record of the result of such examination; and, once in every three months, the institution shall be thoroughly examined in all its departments by three or more of the trustees, and a report of such examination shall be made to the board. (May 3, 1876, 19 Stat. 50, ch. 90, § 7.)

§ 32-813 [8: 183]. Report by officers to Commissioners of District—Contents.

The officers of said school shall at the end of each fiscal year make a report to the commissioners of the District of Columbia, which shall embrace a full and complete inventory of all the personal property in detail, the number of employees, and number of days each is employed during the year and price paid each, and the amount of garden, field, and other products produced, together with the disposi-

tion made of said personal property, products, and so forth. (Mar. 3, 1881, 21 Stat. 459, ch. 134, § 1.)

§ 32-814 [8: 184]. Disposition of proceeds of farm and shops.

The net proceeds of the farm and shops shall be covered into the treasury, to the credit of the United States. (Mar. 3, 1905, 33 Stat. 1211, ch. 1483.)

§ 32-815 [8: 185]. Boys committed—Commitment by court or judge.

Whenever any boy under the age of seventeen years shall be brought before any court of the District of Columbia, or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment, other than imprisonment for life, such court or judge, in lieu of sentencing him to imprisonment in the jail, or fining him, may commit him to said school, to remain until he shall arrive at the age of twenty-one years, unless sooner discharged by the Board of Trustees. Except as otherwise provided in sections 11-909 and 11-910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, any boy under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia, or any law that may be enacted and in force in said District. Except as otherwise provided in sections 11-909 and 11-910, the juvenile court shall have power to commit to said school, first, any boy under seventeen years of age, with the consent of his parent or guardian, against whom any charge of committing any crime or misdemeanor shall have been made, the punishment of which, on conviction, would be confinement in jail or prison; second, any boy under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living, or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; third, any boy under seventeen years of age who is incorrigible, or habitually disregards the commands of his father or mother, or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to his years and condition, or to attend school. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; June 5, 1900, 31 Stat. 266, ch. 715; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

#### AMENDMENTS

This section originally contained a last sentence providing for commitment upon application of a parent, guardian, or relative having charge of the boy.

The 1900 amendment raised the age limit for commitment from 16 to 17 years.

The police court originally had jurisdiction under this section. However, the 1906 act created the juvenile court, and the words were changed and the exception inserted by the compilers of the 1929 edition of this code in conformity therewith. This 1906 act, as now amended, appears herein as chapter 9 of title 11.

#### CROSS REFERENCE

Commitment by juvenile court, § 11-915.

#### NOTES TO DECISIONS

##### IN GENERAL

This section and acts amendatory thereto were obviously framed to operate according to the age of the individual who comes within its purview and without consideration



of either the property rights of the child or her social status. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

#### § 32-816 [8: 186]. Period of detention.

Every boy sent to said school shall remain until he is twenty-one years of age, unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; June 5, 1900, 31 Stat. 267, ch. 715.)

##### AMENDMENT

The act of 1900 deleted a provision that "no boy shall be retained after the superintendent shall have reported him fully reformed."

#### NOTES TO DECISIONS

##### IN GENERAL

Attempts at escape from institutions are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* ((C. C. A. 5), 67 Fed. (2d) 259).

#### § 32-817 [8: 187]. Number of boys limited to number that can be properly accommodated—Notice to court.

Whenever there shall be as large a number of boys in the school as can be properly accommodated, it shall be the duty of the president of the Board of Trustees to give notice to the criminal and juvenile courts of the fact, whereupon no boys shall be sent to the school by said courts until notice shall be given them by the president of the board that more can be received. (May 3, 1876, 19 Stat. 51, ch. 90, § 10; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8.)

##### AMENDMENT

The 1906 act created the Juvenile Court. See note to § 32-815.

#### § 32-818 [8: 188]. Enticing boy from school or harboring escaped boy—Penalty—Arrest and return.

If any person shall entice, or attempt to entice, away from said school any boy legally committed to the same, or shall harbor, conceal, or aid in harboring or concealing any boy who shall have escaped from said school, such person shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall pay a fine of not less than \$10 or more than \$100, which shall be paid to the treasurer of the Board of Trustees; and any policeman shall have power, and it is hereby made his duty, to arrest any boy, when in his power so to do, who shall have escaped from said school, and return him thereto. (May 3, 1876, 19 Stat. 51, ch. 90, § 11.)

#### § 32-819 [8: 189]. Employment and instruction of boys—Apprenticing—Indentures.

The trustees shall have full power to place any boy committed as herein described, during his minority, at such employment and cause him to be instructed in such branches of useful knowledge, as may be suitable to his years and capacity, as they may see fit; and they may, with the consent of any such boy, bind him out as an apprentice during his minority, or for a shorter period, to learn such trade and employment as in their judgment will tend to his future benefit; and the president of the board shall, for such purpose, have power to execute and deliver, on behalf of the said board, indentures of appren-

ticeship for any such boy; and such indentures shall have the same force and effect as other indentures of apprenticeship under the laws of the District of Columbia, and be filed and kept among the records in the office of the said school and it shall not be necessary to record or file them elsewhere. (May 3, 1876, 19 Stat. 51, ch. 90, § 12.)

#### § 32-820 [8: 190]. Release on parole of juvenile offenders committed.

Every male juvenile offender who is now or may hereafter be committed to said school, and who has by his conduct given sufficient evidence that he has reformed, may be released on parole as provided in section 32-821. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 1.)

#### § 32-821 [8: 191]. Board of Trustees authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Trustees of said school that there is reasonable probability that any boy detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Trustees may in its discretion parole such boy under such conditions and regulations as the said Board of Trustees may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Feb. 26, 1909, 35 Stat. 657, ch. 217, § 2.)

#### § 32-822 [8: 192]. Support of boys committed—Accounts—Payment—Rate.

For the support of the boys sent to said school, as hereinbefore mentioned, the District of Columbia shall pay to the Board of Trustees the actual per capita cost of maintenance of such boys; and it shall be the duty of the superintendent to make out and render to the proper officers monthly accounts at the close of each month for the support of the boys in said school, which shall be paid on demand; and, if not paid within ten days from the time the account is presented, shall draw interest at the rate of 1 per centum per month until paid. The per capita cost of persons committed from the District of Columbia and maintained in the National Training School for Boys shall be fixed at a rate not less than \$4.50 per week for each person. (May 3, 1876, 19 Stat. 51, ch. 90, § 13; Aug. 1, 1914, 38 Stat. 657, ch. 223, § 1; Mar. 28, 1918, 40 Stat. 494, ch. 28, § 1.)

##### AMENDMENTS

The original act provided for a payment of \$2 for each boy per week.

The 1914 amendment added the last sentence.

The provision that the District should pay the actual per capita cost of maintenance was contained in the 1918 act.

#### Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

##### Sec.

- |         |   |
|---------|---|
| 32-901. | Name.   |
| 32-902. | Authority of Board of Public Welfare—Powers—Property. |
| 32-903. | Powers of board.                                      |
| 32-904. | By-laws, rules, and regulations—Release of girls.     |
| 32-905. | Officers and employees—Appointment—Compensation.      |



Sec.

- 32-906. Control over inmates—Segregation of white and colored.
- 32-907. Provisions relating to National Training School for Boys applicable.
- 32-908. Girls committed—Commitment by court or judge.
- 32-909. Period of detention.
- 32-910. Release on parole of juvenile offenders committed.
- 32-911. Board authorized to parole—Attorney General.
- 32-912. Appropriations—Disbursement.
- 32-913. Right to amend or repeal chapter.

#### § 32-901 [8: 211]. Name.

The reform school for girls of the District of Columbia shall be known and designated as the National Training School for Girls. (June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

#### § 32-902 [8: 212]. Authority of Board of Public Welfare—Powers—Property.

The Board of Public Welfare as the successor to the board of trustees of the National Training School for Girls is authorized and empowered to establish and maintain a training school for girls at any place within the District of Columbia, subject to the approval of the commissioners thereof, and for that purpose may take and receive by gift, grant, or devise, such real estate and personal property as may be necessary for the purposes of said corporation. At the dissolution of said corporation, or if it should cease for the space of six months to maintain a training school for girls, all the property, real and personal, of said corporation shall vest in the United States. (July 9, 1888, 25 Stat. 245, ch. 595, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

#### COMPILER'S NOTES

The first clause is largely executed and obsolete.

The words "said corporation" are obscure and probably inaccurate.

#### AMENDMENT

The act of 1926 established the Board of Public Welfare as successor to trustees.

#### § 32-903 [8: 213]. Powers of board.

The Board of Public Welfare shall have the same power and authority in relation to girls as the Board of Trustees of the National Training School for Boys possess in relation to boys. (July 9, 1888, 25 Stat. 246, ch. 595, § 3; May 27, 1908, 35 Stat. 380, ch. 200, § 1.)

#### AMENDMENT

The act of 1908 substituted Board of Public Welfare for board of trustees.

#### CROSS REFERENCES

General provisions concerning imprisonment of criminals do not apply to National Training School for Girls, § 24-402.

General provisions concerning powers and duties of Board of Public Welfare, § 3-101 et seq.

Girls under care and custody of Association for Works of Mercy, § 32-101 et seq.

Other provisions concerning the application of laws relating to the National Training School for Boys, § 32-907.

Power and authority of the board of trustees of the National Training School for Boys, § 32-801 et seq.

Transfer of feeble-minded to District Training School, § 32-624.

#### § 32-904 [8: 214]. Bylaws, rules, and regulations—Release of girls.

The Board of Public Welfare may make such by-laws, rules, and regulations for the government of the institution, its officers, teachers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of all girls committed to the school as they may deem necessary and proper and as are not contrary to the Constitution and to the laws of the District of Columbia; and may from time to time alter, amend, and change the same. (May 3, 1876, 19 Stat. 52, ch. 90, § 15; July 9, 1883, 25 Stat. 246, ch. 595, § 5; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

#### AMENDMENTS

This section, which in the 1876 and 1888 acts provided merely that the board of trustees should make such by-laws, rules, and regulations for themselves and the inmates as they deemed proper was amended to read as above by the act of 1901.

The board of trustees was abolished upon organization of the Board of Public Welfare by the 1926 act.

#### CROSS REFERENCE

Rules and regulations generally, § 1-226.

#### § 32-905 [8: 215]. Officers and employees—Appointment—Compensation.

The Board of Public Welfare shall have authority to appoint such officers, agents, teachers, and other employees as may be necessary, and fix the rate of compensation of the same, subject to the approval of the Commissioners of the District of Columbia. (July 9, 1888, 25 Stat. 246, ch. 595, § 4; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

#### AMENDMENT

The act of 1926 substituted Board of Public Welfare for the trustees of the Reform School.

#### CROSS REFERENCES

Appointment of superintendent, § 3-107.

Officers, trustees, or directors may not deal with institution for financial gain, § 32-1007.

#### § 32-906 [8: 216]. Control over inmates—Segregation of white and colored.

The Board of Public Welfare shall have the same power and authority over such girls during the period of their commitment to the school, or while they are being conducted to or from said school, as they possess over such girls within the limits of the District of Columbia. When the buildings authorized to be constructed shall be in readiness to receive girls committed to said school, it shall not be lawful to keep white and colored girls on the same reservations under the control of the Board of Public Welfare as the legal successor to the board of trustees of said school. (Feb. 28, 1923, 42 Stat. 1358, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

#### AMENDMENT

The act of 1926 substituted Board of Public Welfare as successor to the trustees of the National Training School.

#### § 32-907 [8: 217]. Provisions relating to National Training School for Boys applicable.

All the sections of chapter 8 of this title, not inconsistent with the provisions of this chapter, are hereby made applicable to the National Training School for



Girls of the District of Columbia, except the word "girls" shall be understood wherever the word "boys" occurs in said chapter, and the words "eighteen years" wherever the words "sixteen years" occur. (July 9, 1888, 25 Stat. 246, ch. 595, § 6; June 26, 1912, 37 Stat. 171, ch. 182, § 1.)

## AMENDMENT

The act of 1912 provided that the "Reform School for Girls of the District of Columbia" should hereafter be known as the "National Training School for Girls."

## NOTES TO DECISIONS

## IN GENERAL

Under this section, a reform school for girls of the District was authorized, the powers thereof to be exercised by a Board of Trustees, which board was given the same powers and duties relative to girls as were given with respect to boys, by act of May 3, 1876. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32-908 [8: 218]. Girls committed—Commitment by court or judge.

Whenever any girl under the age of seventeen years shall be brought before any court of the District of Columbia or any judge of such court, and shall be convicted of any crime or misdemeanor punishable by fine or imprisonment other than imprisonment for life, such court or judge, in lieu of sentencing her to imprisonment in the jail or fining her, may commit her to said school, to remain until she shall arrive at the age of twenty-one years unless sooner discharged by the Board of Public Welfare. Except as otherwise provided in sections 11-909 and 11-910, the judges of the criminal and juvenile courts of the District of Columbia shall have power to commit to said school, first any girl under seventeen years of age who may be liable to punishment by imprisonment under any existing law of the District of Columbia or any law that may be enacted and in force in said District; second, any girl under seventeen years of age, with the consent of her parent or guardian, against whom any charge of crime or misdemeanor shall have been made, upon probable cause shown to the satisfaction of the court; third, any girl under seventeen years of age who is destitute of a suitable home and adequate means of obtaining an honest living or who is in danger of being brought up, or is brought up, to lead an idle or vicious life; fourth, any girl under seventeen years of age who is incorrigible or habitually disregards the commands of her father or mother or guardian, who leads a vagrant life, or resorts to immoral places or practices, or neglects or refuses to perform labor suitable to her years and condition or to attend school. (May 3, 1876, 19 Stat. 50, ch. 90, § 8; July 9, 1888, 25 Stat. 245, ch. 595, § 6; Feb. 25, 1901, 31 Stat. 809, ch. 478; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

## AMENDMENTS

The 1876 act, relating to a school for boys (§ 32-815), was made applicable to a similar school for girls by the act of 1888, cited to the text.

The age limit for commitment was changed to 17 years by the 1901 act.

The police court originally had jurisdiction under this section. However, the 1906 act created the juvenile court, and the words were changed and the exception inserted by the compilers of the 1929 edition of this code in con-

formity therewith. This 1906 act, as now amended, appears herein as chapter 9 of Title 11.

The act of 1926 provided for the Board of Public Welfare.

## CROSS REFERENCE

Commitment of juveniles by juvenile court, § 11-915.

## NOTES TO DECISIONS

## IN GENERAL

This section and acts amendatory thereto, were obviously framed to operate according to the age of the individual who comes within its purview, and without consideration of either the property rights of the child or her social status. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

## MARRIAGE OF CHILD

Marriage of a female child, in itself, does not automatically terminate the control of delinquent or dependent children. *Richardson v. Browning* (57 App. D. C. 186, 18 Fed. (2d) 1008).

§ 32-909 [8: 219]. Period of detention.

Every girl sent to the National Training School for Girls shall remain until she is twenty-one years of age unless sooner discharged or bound as an apprentice. (May 3, 1876, 19 Stat. 51, ch. 90, § 9; Feb. 25, 1901, 31 Stat. 809, ch. 478.)

## NOTES TO DECISIONS

## ATTEMPTS AT ESCAPE

Attempts at escape from institution are forbidden to all inmates, and if they consider their confinement improper, they are bound to take other means to test the question. *Aderhold v. Soileau* ((C. C. A. 5), 67 Fed. (2d) 259).

§ 32-910 [8: 220]. Release on parole of juvenile offenders committed.

Every female juvenile offender who is now or may hereafter be committed to said school, and who has by her conduct given sufficient evidence that she has reformed, may be released on parole as hereinafter provided. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 1.)

§ 32-911 [8: 221]. Board authorized to parole—Attorney General.

If it shall appear to the satisfaction of the Board of Public Welfare that there is reasonable probability that any girl detained in the said school will, if conditionally released, remain at liberty without violating the laws, then said Board of Trustees may, in its discretion, parole such girl under such conditions and regulations as the said Board of Public Welfare may deem proper. The parole of all such juvenile offenders committed by courts other than those of the District of Columbia shall be subject to the approval of the Attorney General of the United States. (Apr. 15, 1910, 36 Stat. 300, ch. 164, § 2; Mar. 16, 1926, 44 Stat. 208, ch. 58.)

## AMENDMENT

The act of 1926 provided for the Board of Public Welfare as successor to trustees.

§ 32-912 [8: 222]. Appropriations—Disbursement.

Appropriations made for the National Training School for Girls shall be disbursed by the disbursing officer of the District of Columbia in the manner provided by law for expenditure from appropriations for general expenses of the government of said District. (June 5, 1920, 41 Stat. 865, ch. 234, § 1.)



### § 32-913 [8: 223]. Right to amend or repeal chapter.

Congress shall have the right to alter, amend, or repeal this chapter at any time. (July 9, 1888, 25 Stat. 246, ch. 595, § 8.)

## Chapter 10.—MISCELLANEOUS

### Sec.

- 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.
- 32-1002. Visitorial power of Commissioners over certain designated organizations.
- 32-1003. Appropriations for charitable and reformatory institutions to be lien on property.
- 32-1004. Terms of Members of Congress while acting as trustees of charitable institutions.
- 32-1005. Compensation of physicians to the poor.
- 32-1006. Voluntary medical service for charitable institutions.
- 32-1007. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.
- 32-1008. Congressional policy as to appropriations to institutions under sectarian control.
- 32-1009. Sale of products of Home for Aged and Infirm.

### § 32-1001 [8: 231]. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.

The commissioners of the District of Columbia are required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to them, to be transmitted with their annual report to Congress, which report shall also include such recommendations as the commissioners may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance. (July 5, 1884, 23 Stat. 127, ch. 227.)

### COMPILER'S NOTE

This section may be qualified or superseded by § 3-111, which requires the Board of Public Welfare to investigate and inspect institutions of charity supported in whole or in part by public funds.

### § 32-1002 [8: 232]. Visitorial power of Commissioners over certain designated organizations.

The commissioners of the District of Columbia are authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid. (June 4, 1880, 21 Stat. 157, ch. 121, § 1.)

### CROSS REFERENCE

See compiler's note to § 32-1001.

### § 32-1003 [8: 233]. Appropriations for charitable and reformatory institutions to be lien on property.

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to

buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision. (Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1.)

### CROSS REFERENCE

General provisions concerning sale of public lands, § 9-301 et seq.

### § 32-1004 [8: 234]. Terms of Members of Congress while acting as trustees of charitable institutions.

In all cases where Members of Congress or Senators are appointed to represent Congress on any Board of Trustees or Board of Directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of two months after the first meeting of the Congress chosen next after their appointment. (Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1.)

### CROSS REFERENCES

Other provisions concerning term of office of Member of Congress or Senator acting as trustee for the National Training School for Boys, § 32-804.

Term of office of Members of Congress or Senators acting as directors of Columbia Institution for the Deaf, § 31-1007.

### STATUTORY REFERENCE

This section is in U. S. C., title 31, § 722.

### § 32-1005 [8: 235]. Compensation of physicians to the poor.

The compensation of the physicians to the poor shall not exceed forty dollars per month each. (Feb. 25, 1885, 23 Stat. 314, ch. 145.)

### § 32-1006 [8: 236]. Voluntary medical service for charitable institutions.

The Commissioners of the District of Columbia are authorized to accept voluntary medical service for public charitable institutions. (May 18, 1910, 36 Stat. 409, ch. 248, § 1.)

### CROSS REFERENCE

General provision forbidding acceptance of voluntary services, § 1-215.

### § 32-1007 [8: 237]. Trustees of charitable institutions supported by congressional appropriations not to traffic therewith for gain.

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so



engage in such traffic shall be deemed legally disqualified for service on said board or boards. (June 11, 1896, 29 Stat. 410, ch. 419, § 1.)

#### CROSS REFERENCE

Members or employees of Board of Public Welfare may not deal with any institution under its control, inspection, or supervision for financial gain, § 3-113.

§ 32-1003 [8: 238]. Congressional policy as to appropriations to institutions under sectarian control.

It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia, shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control. (June

11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 683, ch. 387.)

#### AMENDMENT

The section as enacted in 1896 was reenacted in 1897.

#### NOTES TO DECISIONS

##### SECULAR CORPORATION

Appropriation for Providence Hospital, a secular corporation created by act of Congress, was not unconstitutional as a law respecting the establishment of religion, even though all the members of the corporation belonged to one religious body. *Bradfield v. Roberts* (175 U. S. 291, 44 L. Ed. 168, 20 Sup. Ct. 121, affg. 12 App. D. C. 453).

§ 32-1009 [8: 239]. Sale of products of Home for Aged and Infirm.

The commissioners are authorized, under such regulations as they may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the District of Columbia and the United States in the proportions required by law. (June 5, 1920, 41 Stat. 865, ch. 234.)



## TITLE 33.—FOOD AND DRUGS

Chap.	Sec.	
1. Adulteration-----	33-101	
2. Candy-----	33-201	
3. Milk, cream, and ice cream-----	33-301	
4. Uniform Narcotic Drug Act-----	33-401	

### Chapter 1.—ADULTERATION

Sec.	
33-101.	Adulterated foods or drugs not to be sold or exposed for sale.
33-102.	Definition of "drug" and "food"—Best quality to be furnished.
33-103.	Adulterated article defined.
33-104.	Rules and regulations for collecting and examining drugs and food—Health officer.
33-105.	Complaints to be investigated.
33-106.	Drug and food samples to be sold to agents of health department.
33-107.	Portion of sample analyzed to be sealed and retained for defendant.
33-108.	Representative of health department not to be interfered with.
33-109.	Prosecutions—Penalties.
33-110.	Repeal—Certain prior laws unaffected.

§ 33-101 [20: 1221]. Adulterated foods or drugs not to be sold or exposed for sale.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

#### CROSS REFERENCES

Adulteration of candy, §§ 33-201 to 33-203.  
 Implied warranties, see notes to § 28-1115 *Hanbeck v. Dutch Baker Boy, Inc.* (70 App. D. C. 398, 107 Fed. (2d) 203).  
 Uniform Narcotic Drug Act, § 33-401 et seq.  
 Weights and measures, § 10-101 et seq.

#### STATUTORY REFERENCE

Federal Food, Drug and Cosmetic Act, U. S. C., title 21, § 321 et seq.

#### NOTES TO DECISIONS

##### WANT OF KNOWLEDGE AS A DEFENSE

It is no defense for a druggist prosecuted for selling an adulterated drug to show simply that he was at the time of sale ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia v. Lynham* (16 App. D. C. 85).

§ 33-102 [20: 1222]. Definition of "drug" and "food"—Best quality to be furnished.

The term "drug," as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term "food," as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the

same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2.)

§ 33-103 [20: 1223]. Adulterated article defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(a) In the case of drugs: First, if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; second, if when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; third, if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture: *Provided*, That if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect; that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution.

(b) In the case of food: First, in the case of cheese, if it is not made exclusively from milk or cream, or both, with or without common salt; second, in the case of coffee, if it is not composed entirely of the seed of the *Coffea arabica*; third, in the case of lard, if it is not made exclusively from the rendered fat of the healthy hog; fourth, in the case of tea, if it is not composed entirely of the genuine leaf of the tea plant not exhausted; fifth, in the case of all kinds of vinegar, if it contains an acidity equivalent to the presence of less than four per centum of absolute acetic acid; and cider vinegar, if it is not made from the pure apple juice and contains less than one and five-tenths per centum of total solids; sixth, in the case of cider, if it is not made from the legitimate product of pure apple juice; in the case of wines and fruit juices, if not made from the pure fruit as represented; and in the case of cider, wines, fruit juices, and malt liquors, if not free from salicylic acid or other preservatives; and in the case of malt liquors, if not free from piric acid, *coccus indicus*, *colchicine*, *colocynthis*, *aloes*, and *wormwood*; seventh, in the case of



glucose, if it contains more than five one-hundredths per centum of ash; eighth, in the case of flour, if it is not composed entirely of one single ground cereal; ninth, in the case of bread, if there is any addition of alum, sulphate of copper, borax, or sulphate of zinc, or other poisonous or harmful ingredient, and if it contains more than thirty-one per centum of moisture, more than two per centum of ash, and less than six and twenty-five one-hundredths per centum of albuminoids; tenth, in the case of olive oil, if it is not made exclusively from the olive berry (*Olea europæa*), and its specific gravity at fifteen and six-tenths degrees centigrade (sixty degrees Fahrenheit) "actual density" to be not more than nine hundred and seventeen one-thousandths nor less than nine hundred and fourteen one-thousandths: *Provided*, That an offense shall not be deemed to be committed under this section in the following cases, that is so say, first, where the order calls for an article of food or drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package; second, where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to him that such article of food or drug is so mixed. (Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13.)

#### COMPILER'S NOTE

Act of 1925 defines the following terms: milk, cream, pasteurized, raw milk, pasteurized milk, certified milk, reconstructed milk, skimmed milk, and ice cream.

#### AMENDMENT

This section is a composite of credits cited in the history line.

#### CROSS REFERENCE

Other provision for regulation and control of production and sale of milk and milk products, § 33-301 et seq.

#### NOTES TO DECISIONS

##### CONSTRUCTION OF ACT

It is no defense for party prosecuted for selling adulterated foods to show that he was ignorant of such fact, as he must know what he sells and that it conforms with the law. *District of Columbia v. Lynham* (16 App. D. C. 85.)

It was never intended that this act should hold manufacturers liable for misstatements as to the curative merits of his goods. This is a criminal statute creating a new offense and should be liberally construed. *United States v. Johnson* ((D. C.-Mo.), 177 Fed. 313).

##### INTERSTATE COMMERCE

There is nothing in the act to regulate the traffic of foods within the States. Its main purpose was to prevent inferior goods from being sold in interstate commerce. *United States v. Charles L. Heinle Specialty Co.* ((D. C.-Pa.), 175 Fed. 299).

#### LABELS

Under this act the label on drugs must state the substance from which such derivative is produced. *United States v. Antikamnia Chemical Co.* (231 U. S. 654, 58 L. Ed. 419, 34 Sup. Ct. 222).

If the labels on the goods are, in fact, true, then there is no violation of the act. The object of the statute is to protect the public from fraud in the purchase of food. *United States v. Sixty-eight Cases of Syrup* ((D. C.-Ill.), 172 Fed. 781).

Where food product is labeled "Compound: pure comb and strained honey and corn syrup," it is not misbranded under the terms of this, merely because the percentage of corn syrup is much greater. *United States v. Boeckmann* ((C. C.-N. Y.), 176 Fed. 382).

#### REVIEW

Where decree in favor of the United States condemning certain food has been fully executed, and costs against claimant voluntarily paid, the appellate court will not review the case. *Charles v. United States* ((C. C. A. 5), 183 Fed. 566).

§ 33-104 [20: 1224]. Rules and regulations for collecting and examining drugs and food—Health officer.

It shall be the duty of the health officer of the District of Columbia, under the direction of the commissioners of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4.)

#### CROSS REFERENCE

Rules and regulations generally, § 1-226.

§ 33-105 [20: 1225]. Complaints to be investigated.

It shall be the duty of the health officer to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaint. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5.)

§ 33-106 [20: 1226]. Drug and food samples to be sold to agents of health department.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any analyst or other officer or agent of the health department, who shall apply to him for the purpose and shall tender him the value of the same, a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. (Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6.)

#### CROSS REFERENCE

Provisions for regulation and control of production and sale of milk and milk products, § 33-301 et seq.

§ 33-107 [20: 1227]. Portion of sample analyzed to be sealed and retained for defendant.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of thirty days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

#### CROSS REFERENCE

Provisions regulating production and sale of milk and milk products, § 33-301 et seq.

§ 33-108 [20: 1228]. Representative of health department not to be interfered with.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the health department in the performance of his



duty in carrying out the provisions of this chapter. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8.)

#### § 33-109 [20: 1229]. Prosecutions—Penalties.

All prosecutions under this chapter shall be in the police court of said District, on information brought in the name of the District of Columbia, and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9.)

#### § 33-110 [20: 1230]. Repeal—Certain prior laws unaffected.

All acts and parts of acts inconsistent with this chapter are hereby repealed: *Provided*, That nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of "An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, or of "An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of 'filled cheese,'" approved June 6, 1896. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10.)

#### COMPILER'S NOTE

The act of August 2, 1886 appears at 24 Stat. 209, ch. 840, and the act of June 6, 1896 appears at 29 Stat. 253, ch. 337.

### Chapter 2.—CANDY

#### Sec.

33-201. Adulterated candy not to be made or sold.

33-202. Penalty.

33-203. Prosecuting attorneys to appear.

#### § 33-201 [20: 1241]. Adulterated candy not to be made or sold.

No person or corporation shall, by himself, his servant, or agent, or as the servant or agent of any other person or corporation, manufacture for sale or knowingly sell or offer to sell any candy adulterated by the admixture of terra alba, barytes, talc, or any other mineral substance, by poisonous colors or flavors, or other ingredients deleterious or detrimental to health. (May 5, 1898, 30 Stat. 398, ch. 241, § 1.)

#### CROSS REFERENCE

Adulteration generally, § 33-101 et seq.

#### NOTES TO DECISIONS

##### WARRANTY

Complaint alleging that injury to plaintiff, caused by biting a stone contained in a confection, was caused by defendant's breach of warranty, stated a good cause of action and would not be dismissed on motion. *Saunders v. Goldstein* ((D. C.-D. C.), 30 Fed. Supp. 150).

#### § 33-202 [20: 1242]. Penalty.

Any person or corporation convicted of violating any of the provisions of this chapter shall be punished by a fine not exceeding one hundred dollars. The candy so adulterated shall be forfeited and destroyed under the direction of the court. (May 5, 1898, 30 Stat. 398, ch. 241, § 2.)

#### § 33-203 [20: 1243]. Prosecuting attorneys to appear.

It is hereby made the duty of the prosecuting attorneys of the District of Columbia to appear for the people and to attend to the prosecution of all complaints under this chapter in all the courts of said District. (May 5, 1898, 30 Stat. 398, ch. 241, § 3.)

#### EFFECTIVE DATE

Section 4 of the act provided "That this act shall take effect upon its passage." This act was approved May 5, 1898.

### Chapter 3.—MILK, CREAM, AND ICE CREAM

#### Sec.

33-301. Production, transportation, and sales—Restriction.

33-302. Dairy requirements—Permit—Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within thirty days if practicable.

33-303. Suspension of permit—Statement of reasons—Notice.

33-304. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.

33-305. Permit revocable for refusal to permit inspections.

33-306. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.

33-307. Rules and regulations to protect supply—Publication.

33-308. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.

33-309. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.

33-310. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."

33-311. Restrictions on sales and use before and after parturition.

33-312. Permit holder to report communicable disease in himself, family, or dairy employees.

33-313. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.

33-314. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.

33-315. Pasteurization to be done under regulations of health officer.

33-316. Penalty for interfering with health officer.

33-317. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to health officer.

33-318. Milk and cream to be received only from licensed shippers.

33-319. Penalties—Prosecution.

33-320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.

33-321. Rules relative to milk supply applicable to States shipping to District.

33-322. Automobile allowance for inspectors.

#### § 33-301 [20: 1251]. Production, transportation, and sales—Restriction.

None but pure, clean, and wholesome milk, cream, or ice cream conforming to the definitions hereinafter specified shall be produced in or shipped into the District of Columbia or held or offered for sale therein, and then only as hereinafter provided. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 1.)



## COMPILER'S NOTE

The original act contains the following additional words preceding the present first word, "That from and after the passage of this act." The act was approved February 27, 1925.

The title of the act of March 2, 1895, 28 Stat. 709, ch. 164, read: "An act to regulate the sale of milk in the District of Columbia, and for other purposes."

The title of the act of Feb. 27, 1925, 43 Stat. 1004, ch. 358, read: "An act to regulate within the District of Columbia the sale of milk, cream, and ice cream, and for other purposes."

Section 20 of the act of 1925 repealed all acts or parts of acts inconsistent therewith.

The act of 1895 was not in conflict with the Federal Pure Food Act of 1906 (U. S. C. 1934, title 21, § 1, et seq.). The act of 1895, looked primarily to the regulation of the source of supply, while the act of 1906 dealt with the sale of misbranded and adulterated foods, and the later act dealt with it when placed in the market. The former aimed at the regulation of the sources of supply to secure sanitary additions and surroundings; the latter operated when the milk reached the District and was subject to tests as to misbranding and adulteration. *District of Columbia v. Simpson* (47 App. D. C. 6).

Upon comparing the provisions of the act of 1895 with those of the later act of 1898, it is clear beyond reasonable doubt that section 3 of the former act has been repealed by operation and fair intendment of sections 4, 6, 7, and 8 of the latter act of 1898; and this was affirmed by the last section of the act of 1898, when it declared that all acts and parts of acts inconsistent therewith were thereby repealed. It is conceded that section 7 of the act of 1895 was repealed by the provision of the subsequent act changing the marketable standard of milk, and we think that section 13 of the act of 1895 is also repealed, because inconsistent with the provisions of the latter act and because the provisions of the latter act were intended to furnish the one general and sole rule upon the subject.

The act of 1895, however, is only impliedly repealed by the subsequent act of 1898, so far as the provisions of the latter act are repugnant to it, or so far only as the latter statute, making new provisions is plainly intended as a substitute for provisions contained in the former act. *Weigand v. District of Columbia* (22 App. D. C. 559).

Since the enactment of 1898 act above referred to (§§ 33-102 to 33-110 herein), the act of Feb. 27, 1925 (§§ 33-301 to 33-319) has become a law and it, in connection with the 1898 act, is deemed to supersede in its entirety the 1895 act which was set out, in part in the District of Columbia Code of 1929 as §§ 1270-1276 of title 20. Consequently, the act of 1895, as set out in the District of Columbia Code of 1929, has been omitted.

## CROSS REFERENCES

Adulteration of milk, § 33-103.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, § 47-2344, 47-2345.

## STATUTORY REFERENCES

Filled milk, U. S. C., title 21, §§ 61-64.

Importation of milk and cream, U. S. C., title 21, §§ 141-149.

## NOTES TO DECISIONS

## IN GENERAL

Moving consideration in the passage of this act was to safeguard the public health, and it is of course within the power of Congress, in the exercise of its police powers in the District, to say how this shall be accomplished. *Leaman v. District of Columbia* (60 App. D. C. 395, 55 Fed. (2d) 1020).

## HERMETICALLY SEALED CANS

Sterilized cream sold in hermetically sealed cans is cream within this section. *Leaman v. District of Columbia* (60 App. D. C. 395, 55 Fed. (2d) 1020).

§ 33-302 [20: 1252]. Dairy requirements—Permit—Application details—Certificate of soundness of cattle—"Person" defined—Application for permit to be acted upon within 30 days if practicable.

No person shall keep or maintain a dairy or dairy farm within the District of Columbia, or produce for sale any milk or cream therein, or bring or send into said District for sale, any milk, cream, or ice cream without a permit so to do from the health officer of said District, and then only in accordance with the terms of said permit. Said permit shall be for the calendar year only in which it is issued and shall be renewable annually on the 1st day of January of each calendar year thereafter. Application for said permit shall be in writing upon a form prescribed by said health officer and shall be accompanied by such detailed description of the dairy or dairy farm or other place where said milk, cream, or ice cream are produced, handled, stored, manufactured, sold, or offered for sale as the said health officer may require, and shall be accompanied by a certificate signed by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, detailed for the purpose, certifying that the cattle producing such milk or cream are physically sound, and in the case of milk or cream held, offered for sale, or sold as such shall in addition be accompanied by a certificate signed by one of the officials aforesaid certifying the cattle producing such milk or cream have reacted negatively to the tuberculin test as prescribed by the Bureau of Animal Industry, United States Department of Agriculture, within one year previous to the filing of the application: *Provided*, That the words "person" or "persons" in sections 33-301 to 33-319 shall be taken and construed to include firms, associations, partnerships, and corporations, as well as individuals: *Provided further*, That the health officer may accept the certification of a state or municipal health officer: *And provided further*, That final action on each application shall, if practicable, be taken within thirty days after the receipt of such application at the health department. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 2.)

§ 33-303 [20: 1253]. Suspension of permit—Statement of reasons—Notice.

The health officer is hereby authorized and empowered to suspend any permit issued under authority of sections 33-301 to 33-319, whenever in his opinion the public health is endangered by the impurity or unwholesomeness of the milk, cream, or ice cream supplied by any person, and such suspension shall remain in force until such time as the said health officer is satisfied the danger no longer continues: *Provided*, That whenever any permit is suspended the health officer shall furnish in writing to the holder of said permit his reasons for such suspension, and the dealer receiving such milk or cream shall also be promptly notified by the health officer of such suspension. (Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 3.)



§ 33-304 [20:1254]. Interstate shipments of milk or cream into District for ice cream permitted if conforming to State law requirements.

Nothing in sections 33-301 to 33-319 shall be construed to prohibit interstate shipments of milk or cream into the District of Columbia for manufacturing into ice cream: *Provided*, That such milk or cream is produced or handled in accordance with the specifications of an authorized medical milk commission or a state board of health. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 4.)

COMPILER'S NOTE

This section affects or supersedes § 33-321.

§ 33-305 [20:1255]. Permit revocable for refusal to permit inspections.

Failure or refusal on the part of any person holding a permit under authority of sections 33-301 to 33-319 to permit the health officer of the District of Columbia, or his duly appointed representative, to inspect the dairy, dairy farm, cattle, and all appurtenances of such dairy, dairy farm, or other places where said milk, cream, or ice cream are produced, stored, manufactured, handled, offered for sale, or sold may be deemed sufficient to suspend or revoke such permit at the discretion of said health officer. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 5.)

§ 33-306 [20:1256]. Milk, cream, and ice cream to be seized if brought to District illegally—Owner to be notified of seizure—Destruction.

The health officer or his duly appointed representative is authorized to seize all milk, cream, or ice cream which may, in violation of the provisions of sections 33-301 to 33-319, be brought into the District of Columbia. The owner of any such milk, cream, or ice cream shall be at once notified of such seizure; and if he shall fail within twenty-four hours to direct the removal of the same from the District of Columbia, the health officer may destroy or otherwise dispose of the said milk, cream, or ice cream. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 6.)

§ 33-307 [20:1257]. Rules and regulations to protect supply—Publication.

The health officer of the District of Columbia, under the direction of and with the approval of the commissioners of said District, is hereby authorized and empowered to make and enforce all such reasonable regulations, consistent with sections 33-301 to 33-319, from time to time, as he may deem proper, to protect the milk, cream, and ice cream supply of the said District of Columbia: *Provided, however*, That such regulations shall be published once at least thirty days in some daily newspaper in the District of Columbia of general circulation before any penalty be exacted for violation thereof. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 7.)

COMPILER'S NOTE

The wording of the proviso is somewhat confusing and probably erroneous, but it is set forth as it is contained in the act of Congress. If it means that no penalty shall be exacted within thirty days after publication thereof, the proviso conforms to the general rule as set forth in § 1-225.

CROSS REFERENCES

Rules and regulations for pasteurization, § 33-315.  
Rules and regulations generally, § 1-226 and notes.

§ 33-308 [20:1258]. Milk wagons to bear name of owner and location of dairy—Trucks bringing milk, cream, or ice cream to District to bear name of owner.

All milk wagons within the District of Columbia shall have the name of the owner, the number of the permit, and the location of the dairy from which said wagons haul milk or cream painted thereon plainly and legibly: *Provided*, That all trucks or wagons engaged in bringing milk, cream, or ice cream into the said District shall have the name and address of the owner painted plainly and legibly thereon. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 8.)

§ 33-309 [20:1259]. Dealers to keep posted names of persons supplying milk, cream, and ice cream—General distributors to keep record of persons supplying commodities.

All persons within the District of Columbia, having or offering for sale, or having in their possession with intent to sell milk, cream, or ice cream, shall at all times keep the name or names of the person or persons from whom the said milk, cream, or ice cream have been obtained posted in a conspicuous place wherever such milk, cream, or ice cream are kept or offered for sale: *Provided, however*, That general distributors of milk, cream, or ice cream shall only be required to keep a record of the name of all persons from whom said distributor is receiving milk, cream, or ice cream, which record shall at all times be open to inspection by the health officer or his duly authorized representative. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 9.)

§ 33-310 [20:1260]. Indicative labels required for "skimmed milk," "reconstructed milk," or "reconstructed cream."

No person shall sell, exchange, or deliver, or have in his possession with intent to sell, exchange, or deliver, any "skimmed milk," or "reconstructed milk," or "reconstructed cream" unless every can, vessel, package, or container is plainly labeled conveying to the purchaser the exact nature of its contents. (Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 10.)

§ 33-311 [20:1261]. Restrictions on sales and use before and after parturition.

It shall be unlawful for any person or persons to sell, offer for sale, or have in their possession with intent to sell, within the District of Columbia, milk or cream taken from cows less than fifteen days before or seven days after parturition, nor shall any such milk or cream be used in the manufacture of ice cream. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 11.)

§ 33-312 [20:1262]. Permit holder to report communicable disease in himself, family, or dairy employees.

Any person or persons holding a permit issued under authority of sections 33-301 to 33-319 being afflicted, or any member of his family, hired help, or other person on said dairy farm being afflicted with a communicable disease, or if he has reason to suspect any such communicable disease, shall report the same to the health officer of the District of Columbia within twenty-four hours after becoming aware thereof. Wilful violation of this section shall



be deemed sufficient cause for revocation of said permit. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 12.)

**§ 33-313 [20: 1263]. Definitions and standards of different classes of milk, cream, and ice cream—Health tests.**

For the purpose and within the meaning of sections 33-301 to 33-319 "milk" shall be held to be the lacteal secretion obtained from the complete milking of cows.

"Cream" is that portion of the milk rich in fat which rises to the surface of the milk on standing or is separated from it by centrifugal force or otherwise, and shall contain not less than 20 per centum of butter fat and shall not be offered for sale or sold unless and until it has been pasteurized under regulations prescribed by the health officer, and shall be free from pathogenic organisms and from visible dirt.

The term "pasteurized" as used in sections 33-301 to 33-319 shall be held to mean the heating of milk or cream to a temperature of not less than one hundred and forty-two degrees Fahrenheit and maintained at such temperature for a period of not less than thirty minutes, then immediately cooled to a temperature of not more than forty-five degrees Fahrenheit and maintained at not more than that temperature.

"Raw milk" is milk produced from healthy cows as determined by physical examination and by a tuberculin test made within one year previous to the time of filing of the application; said physical examination and tuberculin test shall be made by an official of the health department of the District of Columbia, the United States Department of Agriculture, or some veterinarian authorized by the United States Department of Agriculture or the health department of the District of Columbia, to make such examination and tuberculin test; and said tuberculin test shall be repeated at least one time during each succeeding calendar year; and when reactors are found in any dairy herd licensed under sections 33-301 to 33-319 the tuberculin test shall be repeated semi-annually thereafter until such time as tuberculosis is eradicated from the herd: *Provided*, That no cow or bull shall be added to any dairy herd licensed under sections 33-301 to 33-319 until such cow or bull has first been physically examined and tuberculin tested as hereinbefore provided. The farm on which the milk is produced shall rate not less than 80 per centum, the dairy from which such milk is sold or distributed not less than 90 per centum, and the cows producing the milk not less than 95 per centum on the rating cards in use at the time by the health department of the District of Columbia, and said milk shall not at any time contain less than 3.5 per centum of butter fat nor less than 11.5 per centum of total solids; nor shall it contain when delivered to the consumer more than twenty thousand bacteria per cubic centimeter total count, and no colon bacilli or other pathogenic organism shall be present in one-fiftieth cubic centimeter, and the milk shall be free from all visible dirt.

"Pasteurized milk" is milk produced from healthy cows, as determined by the physical examination and tuberculin test as hereinbefore provided for "raw" milk. Said milk shall be pasteurized under regula-

tions prescribed by the health officer. The milk immediately after being pasteurized shall be cooled to a temperature of not more than forty-five degrees Fahrenheit and maintained to at least such temperature. The farm on which the milk is produced must rate not less than 70 per centum, the dairy from which said milk is sold or distributed not less than 85 per centum, and the cows producing the milk not less than 90 per centum on the rating cards in use on February 27, 1925, by the health department of the District of Columbia. It shall not contain less than 3.5 per centum of butterfat or 11.5 per centum total solids; nor shall it contain when delivered to the consumer more than forty thousand bacteria, total count, per cubic centimeter, and be free from colon bacilli and other pathogenic organisms and all visible dirt. No such milk shall be pasteurized more than one time.

"Certified milk" is milk produced and handled in accordance with specifications of an authorized medical milk commission and must be labeled according to the specifications of the commission which certifies to the quality of the product. A copy of the necessary articles of certification must be filed in the health department of the District of Columbia and be approved by the health officer of said District.

"Reconstructed milk" or "cream" means milk or cream which has been concentrated or dried in any manner and subsequently restored to a liquid state.

"Skimmed milk" is that part of milk from which the fat has been partly or entirely removed and shall contain not less than 9 per centum of milk solids, inclusive of fat.

"Ice cream" means the frozen product or mixture made from pasteurized cream, milk, or product of milk sweetened with sugar, to which has been added pure, wholesome food gelatin, vegetable gum, or other thickener, with or without wholesome flavoring extract, fruits, nuts, cocoa, chocolate, eggs, cake, candy, or confections, and which contains not less than 8 per centum, by weight of milk (butter) fat. (Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13.)

**§ 33-314 [20: 1264]. Milk, cream, or ice cream not to be sold or offered for sale that does not comply with requirements—All containers of milk or cream shall have grade plainly printed thereon.**

No person in the District of Columbia shall handle, sell, offer for sale, or have in his possession with intent to sell, any milk, cream, or ice cream which does not comply with the definitions hereinbefore specified, and all bottles, cans, vessels, or other containers in which said milk or cream is sold or offered for sale shall have plainly and legibly printed thereon the grade of the milk or cream which is contained therein. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 14.)

**CROSS REFERENCE**

Other provisions regulating milk containers, § 10-114.

**§ 33-315 [20: 1265]. Pasteurization to be done under regulations of health officer.**

The pasteurization of all milk or cream required under sections 33-301 to 33-319 to be pasteurized shall be done under regulations to be prescribed by the health officer of the District of Columbia and



open to the supervision of said health officer. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 15.)

#### CROSS REFERENCES

Other provisions for rules and regulations, § 33-307.  
Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

§ 33-316 [20: 1266]. Penalty for interfering with health officer.

Any person who shall molest, hinder, or in any manner prevent said health officer or his duly appointed agent from performing any duty imposed upon him or them by the provisions of sections 33-301 to 33-319 shall be deemed guilty of violating the provisions of sections 33-301 to 33-319 and be liable to the penalty prescribed therefor. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 16.)

§ 33-317 [20: 1267]. Names of shippers to be posted in receiving station—Record of shipments kept—Reports to health officer.

Every person, or persons, receiving a permit to ship milk or cream into the District of Columbia from any creamery, or receiving station, aforesaid, shall keep posted at all times in such creamery, or receiving station, the names of all persons licensed under sections 33-301 to 33-319, who are delivering milk or cream at any such creamery, or receiving station, and shall keep a record of all milk and cream received, and furnish from time to time a sworn statement giving such information relative thereto as the said health officer may require. The health officer of the District of Columbia shall have power by regulation to include other places than creameries, or receiving stations, under the provisions of this section, from time to time, as may be necessary in his judgment. (Feb. 27, 1925, 43 Stat. 1007, ch. 358, § 17.)

§ 33-318 [20: 1268]. Milk and cream to be received only from licensed shippers.

No person in the District of Columbia licensed under sections 33-301 to 33-319 shall receive any milk or cream from any source until he shall have first ascertained from the health department that the person from whom such milk is obtained holds a license from the health officer of said District to send milk or cream into the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 18.)

§ 33-319 [20: 1269]. Penalties—Prosecution.

Any person or persons violating any of the provisions of sections 33-301 to 33-319, or of any of the regulations promulgated under said sections shall, on conviction, be punished for the first offense by a fine of not more than \$10; for the second offense by a fine of not more than \$50, and for any subsequent offenses within one year, a fine of not more than \$500, or by imprisonment in the workhouse for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court, and in addition any license issued under authority of said sections may be revoked. Prosecutions hereunder shall be in the police court by the District of Columbia. (Feb. 27, 1925, 43 Stat. 1008, ch. 358, § 19.)

§ 33-320 [20: 1277]. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.

No officer or employee of the health department shall, during his continuance in office, serve in his private capacity, for fee, gift, or reward, any person licensed to keep or maintain a dairy or dairy farm in said District or to bring or to send milk into said District, or any person who has applied or is about to apply for such license, or any manufacturer or dealer in foods, drugs, or disinfectants, or similar materials: *Provided further*, That every place where milk is sold shall be deemed a dairy under the law for purposes of inspection. (Mar. 2, 1907, 34 Stat. 1145, ch. 2510.)

§ 33-321 [20: 1278]. Rules relative to milk supply applicable to States shipping to District.

The examinations, inspection, rules and regulations concerning the milk supply of the District of Columbia shall be applied alike to each state shipping milk into said District. (Mar. 3, 1915, 38 Stat. 915, ch. 80.)

#### COMPILER'S NOTE

This section is affected or superseded by § 33-304.

§ 33-322. Automobile allowance for inspectors.

Inspectors of dairy farms may receive an allowance for furnishing privately owned motor vehicles in the performance of official duties at the rate of not to exceed \$312 per annum for each inspector. (June 12, 1940, 54 Stat. —, ch. 333, § 1.)

### Chapter 4.—UNIFORM NARCOTIC DRUG ACT

#### Sec.

- 33-401. Definitions.
- 33-402. Acts declared unlawful.
- 33-403. Manufacturers and wholesalers—License required.
- 33-404. Qualifications for licenses—Revocation and suspension.
- 33-405. Use of official written orders.
- 33-406. Sale on written orders—Vendees—"Lawful possession" defined.
- 33-407. Authorized uses.
- 33-408. Sales by apothecaries.
- 33-409. Professional use of narcotic drugs—Return of unused drugs.
- 33-410. Preparations exempted—Conditions—Paregoric.
- 33-411. Records to be kept—Form—Preservation.
- 33-412. Labels.
- 33-413. Authorized possession of narcotic drugs by individuals.
- 33-414. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.
- 33-415. Persons and corporations exempted.
- 33-416. Common nuisances.
- 33-417. Forfeiture by unlawful possession—Disposition—Record.
- 33-418. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.
- 33-419. Inspection of records—Divulging information contained in records.
- 33-420. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.
- 33-421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.
- 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.



## Sec.

33-423. Penalties.

33-424. Effect of acquittal or conviction under Federal narcotic laws.

33-425. Construction—Provisions severable.

## § 33-401 [6: 345]. Definitions.

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(a) "Person" includes any corporation, association, copartnership, or one or more individuals.

(b) "Physician" means a person authorized by law to practice medicine or osteopathy in the District of Columbia.

(c) "Dentist" means a person authorized by law to practice dentistry in the District of Columbia.

(d) "Veterinarian" means a person authorized by law to practice veterinary medicine in the District of Columbia.

(e) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.

(f) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared on official written orders but not on prescription.

(g) "Apothecary" means a licensed pharmacist as defined by the laws of the District of Columbia and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of the District of Columbia.

(h) "Hospital" means an institution or clinic for the care and treatment of the sick and injured, approved by the health officer of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian.

(i) "Laboratory" means a laboratory approved by the health officer of the District of Columbia as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(j) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee.

(k) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(l) "Opium" includes morphine, codeine, and heroin, and any compound, manufacture, salt, derivative, mixture, or preparation of opium.

(m) "Cannabis" includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds

thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including specifically the drugs known as American hemp, marihuana, Indian hemp or hasheesh, as used in cigarettes or in any other articles, compounds, mixtures, preparations, or products whatsoever, but shall not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom); fiber, oil or cake; or the sterilized seed of such plant which is incapable of germination.

(n) "Narcotic drugs" means coca leaves, opium, cannabis, and every substance not chemically distinguishable from them.

(o) "Federal narcotic laws" means the laws of the United States relating to opium, cocoa leaves, cannabis, and other narcotic drugs.

(p) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law and, if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(q) "Dispense" includes distribute, leave with, give away, dispose of, or deliver.

(r) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

(s) "Board of Pharmacy" means the Board of Pharmacy of the District of Columbia as provided by section 2-608. (June 20, 1938, 52 Stat. 785, ch. 532, § 1.)

## CROSS REFERENCE

Other provisions concerning sale of dangerous drugs, §§ 2-610 to 2-615.

## STATUTORY REFERENCES

Federal Narcotic Drugs Import and Export Act, U. S. C., title 21, §§ 171-185.

Federal Food, Drug, and Cosmetic Act, U. S. C., title 21, § 321 et seq.

## § 33-402 [6: 345a]. Acts declared unlawful.

It shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter. (June 20, 1938, 52 Stat. 787, ch. 532, § 2.)

## CROSS REFERENCE

Exemptions, §§ 33-409, 33-410, 33-415.

## § 33-403 [6: 345b]. Manufacturers and wholesalers—License required.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Board of Pharmacy. Licenses shall be issued for a period of one year and may be renewed for a like period. A fee of \$10 shall be paid to the Board of Pharmacy for any



license so issued or renewed. The said Board of Pharmacy is authorized to have printed such licenses as may be necessary and to be paid for out of the money collected by it for the issuance of licenses. At the close of each fiscal year any funds unexpended in excess of the sum of \$100 shall be paid into the treasury of the United States to the credit of the District of Columbia. (June 20, 1938, 52 Stat. 787, ch. 532, § 3.)

## CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Refund of fees when license refused, § 47-1018.

§ 33-404 [6: 345c]. Qualifications for licenses—Revocation and suspension.

No license shall be issued under section 33-403 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy of the following:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves, cannabis, or other narcotic drugs, or to any person who is a narcotic-drug addict.

The Board of Pharmacy may suspend or revoke any license issued by said board under the provisions of this chapter for cause. (June 20, 1938, 52 Stat. 787, ch. 532, § 4.)

§ 33-405 [6: 345d]. Use of official written orders.

An official written order for any narcotic drug shall be signed in duplicate by the person giving said order or by his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be unlawful for a manufacturer or wholesaler to sell, barter, exchange, or give away any preparation or remedy described in section 1041, Title 26, U. S. Code, which contains not more than two grains of opium, or not more than one-fourth of a grain of morphine, or not more than one-eighth of a grain of heroin, or not more than one grain of codeine, or any salt or derivative of any of them in one fluid or avoirdupois ounce, except in pursuance of a written order, on a form to be issued in blank by the District of Columbia Board of Pharmacy. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange, or give away any of the aforesaid preparations shall preserve such order for a period of two years in such a way as to be readily accessible

to inspection by any officer or agent authorized for that purpose.

The Board of Pharmacy shall cause suitable written order forms to be prepared for the purchase of narcotics for which no form is provided by the United States Commissioner of Narcotics, and shall cause the same to be for sale by said board at a cost not to exceed \$1 a hundred, to those persons who shall have registered under the federal narcotic laws. The Board of Pharmacy shall keep an account of the number of forms sold and the names and addresses of the purchasers and the serial numbers of such forms sold to each purchaser. Whenever the Board of Pharmacy shall sell any such forms it shall cause the name and address of the purchaser thereof to be plainly written or stamped thereon before delivering the same. The said board is authorized and directed to make such rules and regulations, not inconsistent with law, as it may deem necessary for the administration and enforcement of this chapter.

It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal narcotic laws respecting official order forms if such order forms are authorized and required by federal laws, or, if no such order form is provided, then with the rules and regulations of the Board of Pharmacy respecting official order forms. (June 20, 1938, 52 Stat. 787, ch. 532, § 5.)

## CROSS REFERENCE

Rules and regulations generally, § 1-226 et seq.

§ 33-406 [6: 345e]. Sale on written orders—Vendees—"Lawful possession" defined.

(a) A duly-licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

- (1) To a manufacturer, wholesaler, or apothecary;
- (2) To a physician, dentist, or veterinarian;
- (3) To a hospital, but only for use by or in that hospital: *Provided*, That the official written order is signed by a physician, dentist, veterinarian, or pharmacist connected with that hospital; and
- (4) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(b) A duly-licensed manufacturer or wholesaler may also sell narcotic drugs to any of the following persons:

- (1) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of the District of Columbia, or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties.
- (2) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port:



*Provided*, That such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon, or retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(3) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(c) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful only if obtained and used in the regular course of business, occupation, profession, employment, or duty of the possessor. (June 20, 1938, 52 Stat. 788, ch. 532, § 6.)

#### § 33-407 [6: 345f]. Authorized uses.

A person in charge of a hospital or of a laboratory, or in the employ of the District of Columbia or of any state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy, or Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of section 33-406, or otherwise, shall not administer, nor dispense, nor otherwise use such drugs, within the District of Columbia, except within the scope of his employment or official duty, and then only for scientific or medical purposes and subject to the provisions of this chapter. (June 20, 1938, 52 Stat. 789, ch. 532, § 7.)

#### § 33-408 [6: 345g]. Sales by apothecaries.

(a) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian, dated and signed, in ink or indelible pencil, on the day when issued, by the physician, dentist, or veterinarian prescribing said narcotic drugs. The prescription when issued shall also state the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. The prescription shall not be refilled.

(b) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer,

wholesaler, or apothecary, but only on an official written order.

(c) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 per centum of the complete solution, to be used for medical purposes. (June 20, 1938, 52 Stat. 789, ch. 532, § 8.)

#### § 33-409 [6: 345h]. Professional use of narcotic drugs—Return of unused drugs.

(a) Physicians and dentists.—A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe in writing, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the patient for whom the narcotic drug is prescribed and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

(b) Veterinarians.—A veterinarian, in good faith and in the course of his professional practice only and not for use by a human being, may prescribe in writing, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued and shall bear the full name and address of the owner of the animal; the species of the animal for which the narcotic is prescribed; and the full name, address, and registry number under the federal narcotic laws of the person prescribing, provided he is required by those laws to be so registered.

(c) Return of unused drugs.—Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient. (June 20, 1938, 52 Stat. 790, ch. 532, § 9.)

#### § 33-410 [6: 345i]. Preparations exempted—Conditions—Paregoric.

Except as otherwise in this chapter specifically provided, said sections shall not apply to the following cases:

(a) Prescribing, administering, dispensing, or selling at retail of any medicinal preparation that contains in one fluid ounce or, if a solid or semisolid preparation, in one avoirdupois ounce (1) not more than two grains of opium, (2) not more than one-quarter of a grain of morphine or of any of its salts, (3) not more than one grain of codeine or of any of its salts, (4) not more than one-eighth of a grain of heroin or of any of its salts.

(b) Prescribing, administering, dispensing, or selling at retail of liniments, ointments, and other preparations that are susceptible of external use only



and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments, or preparations, except that this chapter shall apply to all liniments, ointments, and other preparations that contain coca leaves in any quantity or combination.

The exemptions authorized by this section shall be subject to the following conditions:

(1) The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, administered, dispensed, or sold, shall contain in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

Such preparation shall be prescribed, administered, dispensed, and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

Nothing in this section shall be construed to limit the kind and quantity of any narcotic drug that may be prescribed, administered, dispensed, or sold to any person, or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold in compliance with the general provisions of this chapter.

Manufacturers or wholesalers shall sell tincture opii camphorata, commonly known as paregoric, only in accordance with the provisions of sections 33-405, 33-406, on official written order forms provided for that purpose by the Board of Pharmacy. It shall be unlawful for any person to bring into or have in his possession for sale in the District of Columbia any paregoric unless an official written order form has been issued therefor. No person shall dispense or sell any paregoric at retail to any person without a prescription from a duly licensed physician, dentist, veterinarian, or other duly authorized person. Prescriptions shall be retained and filed as provided in section 33-403. (June 20, 1938, 52 Stat. 790, ch. 532, § 10.

**§ 33-411 [6: 345j]. Records to be kept—Form—Preservation.**

(a) Physicians, dentists, veterinarians, and other authorized persons.—Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription in accordance with the provisions of subsection (e) of this section. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

(b) Manufacturers and wholesalers.—Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and

of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(c) Apothecaries.—Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (e) of this section.

(d) Vendors of exempted preparations.—Every person who purchases for resale, or who sells narcotic drug preparations exempted by section 33-410 shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subsection (e) of this section.

(e) Form and preservation of records.—The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis sativa* L., received, or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft. (June 20, 1938, 52 Stat. 791, ch. 532, § 11.)

**§ 33-412 [6: 345k]. Labels.**

(a) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this chapter, shall alter, deface, or remove any label so affixed.

(b) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, or veterinarian he shall affix to the container in which such drug is sold or dispensed a label showing his own name, address, and registry number, or the name, address, and registry number



of the apothecary for whom he is lawfully acting; the name and address of the patient, or, if the patient is an animal, the name and address of the owner of the animal, and the species of the animal; the name, address, and registry number of the physician, dentist, or veterinarian, by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed as long as any of the original contents remain. (June 20, 1938, 52 Stat. 792, ch. 532, § 12.)

**§ 33-413 [6: 345l]. Authorized possession of narcotic drugs by individuals.**

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of section 33-406, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. (June 20, 1938, 52 Stat. 792, ch. 532, § 13.)

**§ 33-414 [6: 345m]. Search warrants—Requirements—Form—Contents—Return—Penalty for interfering with service.**

(a) A search warrant may be issued by any judge of the police court of the District of Columbia or by a United States commissioner for the District of Columbia when any narcotic drugs are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of this chapter, and any such narcotic drugs and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding, may be seized thereunder, and shall be subject to such disposition as the court may make thereof and such narcotic drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him

forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner must insert a direction in the warrant, that it be served in the daytime unless the affidavit is positive that the property is in the place to be searched in which case he must insert a direction that it be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following in effect: "I, ———, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the police court.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than two years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14.)

**CROSS REFERENCE**

Search warrants, § 23-301 et seq.

**§ 33-415 [6: 345n]. Persons and corporations exempted.**

The provisions of this chapter restricting the possession and having control of narcotic drugs shall not



apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties. (June 20, 1938, 52 Stat. 794, ch. 532, § 15.)

§ 33-416 [6: 345o]. Common nuisances.

Any store, shop, warehouse, dwelling-house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance. (June 20, 1938, 52 Stat. 794, ch. 532, § 16.)

§ 33-417 [6: 345p]. Forfeiture by unlawful possession—Disposition—Record.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(b) Upon written application by the Board of Pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Board of Pharmacy for distribution or destruction, as hereinafter provided.

(c) Upon application by any hospital within the District of Columbia not operated for private gain, the Board of Pharmacy may, in its discretion, deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Board of Pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(d) The Board of Pharmacy of the District of Columbia shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal or District of Columbia officers charged with the enforcement of federal and District narcotic laws. (June 20, 1938, 52 Stat. 794, ch. 532, § 17.)

CROSS REFERENCE

Disposition of goods seized under search warrants generally, § 23-301 et seq.

§ 33-418 [6: 345q]. Notice of conviction to be sent to licensing board—Revocation, suspension, and reinstatement of license.

On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business, and the said board or officer may in its or his discretion suspend or revoke the license of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing for good cause, said board or officer may reinstate such license or registration. (June 20, 1938, 52 Stat. 795, ch. 532, § 18.)

§ 33-419 [6: 345r]. Inspection of records—Divulging information contained in records.

Prescriptions, orders, and records, required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal and District of Columbia officers whose duty it is to enforce the laws of the District of Columbia, or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (June 20, 1938, 52 Stat. 795, ch. 532, § 19.)

§ 33-420 [6: 345s]. Obtaining a narcotic drug unlawfully—Communication to physician not privileged—False statements or false personation in procurement—False label—Application to section 33-410.

(a) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the forgery or alteration of a prescription or of any written order; or (3) by the concealment of a material fact; or (4) by the use of a false name or the giving of a false address.

(b) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(c) No person shall wilfully make a false statement in any prescription, order, report, or record, required by this chapter.

(d) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.



(e) No person shall make or utter any false or forged prescription or false or forged written order.

(f) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(g) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of section 33-410, in the same way as they apply to transactions under all other sections. (June 20, 1938, 52 Stat. 795, ch. 532, § 20.)

**§ 33-421 [6: 345t]. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.**

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption, contained in this chapter, and the burden of proof of any such exception, excuse, proviso, or exemption, shall be upon the defendant. (June 20, 1938, 52 Stat. 796, ch. 532, § 21.)

**§ 33-422 [6: 345u]. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.**

It is hereby made the duty of the major and superintendent of police of the District of Columbia to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States relating to narcotic drugs.

The commissioners of the District of Columbia are authorized to employ such personal services for the clerical work of the Board of Pharmacy as may be necessary to carry out the provisions of this chapter and to provide for the expenses of said board, including the cost of preparation and distribution of such official order forms as may be provided by the regulations of the Board of Pharmacy. Salaries of employees shall be fixed in accordance with the Classification Act of 1923, as amended (U. S. C., title

5, ch. 13). The commissioners of the District of Columbia shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (June 20, 1938, 52 Stat. 796, ch. 532, § 22.)

**§ 33-423 [6: 345v]. Penalties.**

Any person violating any provision of this chapter, or of any regulation made by the Board of Pharmacy under authority of said sections, shall upon conviction be punished, for the first offense, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not exceeding one year, or by both such fine and imprisonment, and for any subsequent offense by a fine of not less than \$500 nor more than \$5,000, or by imprisonment for not exceeding ten years, or by both such fine and imprisonment. (June 20, 1938, 52 Stat. 796, ch. 532, § 23.)

**§ 33-424 [6: 345w]. Effect of acquittal or conviction under Federal narcotic laws.**

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of narcotic drugs, of the same act or omission which, it is alleged, constitutes a violation of this chapter. (June 20, 1938, 52 Stat. 796, ch. 532, § 24.)

**§ 33-425 [6: 345x]. Construction—Provisions severable.**

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. (June 20, 1938, 52 Stat. 796, ch. 532, § 25.)



## TITLE 34.—HOTELS AND LODGING-HOUSES

Chap.	Sec.
1. Rights and liabilities.....	34-101

### Chapter 1.—RIGHTS AND LIABILITIES

Sec.	
34-101.	Hotel proprietors and innkeepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds \$500—Liability for certain retained property.
34-102.	Liability for baggage stolen from rooms—Effect of printed notice.
34-103.	Lien of boarding-house and innkeepers.
34-105.	Enforcement of lien by sale.
34-106.	Enforcement of lien by bill in equity.

**§ 34-101 [13: 1].** Hotel proprietors and innkeepers furnishing safe and giving notice not liable for injury to guests' property—When value exceeds \$500—Liability for certain retained property.

Whenever the proprietor of any hotel or inn in the District of Columbia shall provide in such hotel or inn a suitable safe or vault for the safe-keeping of any money, jewelry, or other articles of value, other than wearing apparel, belonging to or in the custody of guests, and shall notify the guests thereof by keeping conspicuously posted in the office and on the inside of the entrance door of the sleeping-rooms of said hotel or inn a notice printed in distinct English type, such proprietor shall not be liable for the loss of or injury to any such property by theft or otherwise sustained by any guests unless such guest has offered to deliver the same to such proprietor for custody in such safe or vault and such proprietor has omitted or refused to receive it and deposit it in such safe or vault and to give such guest a receipt therefor: *Provided*, That in no case shall such proprietor be liable for the loss or injury to property so deposited in an amount exceeding the sum of \$500, except by special contract in writing, stating the kind and value of property received, the kind and extent of the liability of said proprietor, and the reasonable consideration to be paid for such safe-keeping, not in excess of the customary insurance charge or premium, and which said contract shall be signed by said guest and said proprietor or his clerk: *Provided further*, That nothing herein contained shall apply to such an amount of money and such jewelry or other articles of value as is usual, common, or prudent for guests to retain in their rooms. (Dec. 21, 1920, 41 Stat. 1081, ch. 2, § 1.)

#### CROSS REFERENCES

- Defrauding hotel, § 22-1301.
- Embezzlement by proprietor, § 22-1205.
- License fee, hotels, § 47-2328.
- License fee, lodging-houses, § 47-2330.

**§ 34-102 [13: 2].** Liability for baggage stolen from rooms—Effect of printed notice.

Whenever the proprietor of any hotel or inn shall keep posted in a conspicuous manner on the inside of the entrance door to the sleeping-rooms of said

hotel or inn a notice printed in distinct English type requiring the guests occupying said rooms to lock or bolt the door of said room and upon leaving said room to lock the door and deposit the key at the office, the proprietor shall not be liable for any baggage stolen from said room if it shall appear that said room was left by the guest unlocked or unbolted, or that the key was not so deposited at the office at the time of the loss of said baggage, unless the loss is directly or indirectly caused by or attributable to the proprietor or his employee or employees. (Dec. 21, 1920, 41 Stat. 1082, ch. 2, § 2.)

**§ 34-103 [13: 3].** Lien of boarding-house and innkeepers.

Every inn-keeper, keeper of a boarding-house, or house of private entertainment shall have a lien upon and may retain possession of the baggage and effects of any guest or boarder for the amount which may be due him from such guest for board and lodging until such amount is paid. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1261.)

#### CROSS REFERENCE

Fraudulent representations to obtain accommodations, fraudulent removal of baggage, criminal penalty, § 22-1301.

**§ 34-104 [13: 5].** Enforcement of lien by sale.

If the amount due and for which a lien is given by section 34-103 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

**§ 34-105 [13: 6].** Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)







## TITLE 35.—INSURANCE

Chap.	Sec.
1. Insurance Department—General provisions	35-101
2. Provisions applicable to more than one kind of insurance	35-201
3. Life Insurance Act—Definitions	35-301
4. Department of Insurance with respect to life companies	35-401
5. Domestic life companies	35-501
6. Foreign and alien life companies	35-601
7. Provisions relating to all life insurance companies	35-701
8. Life Insurance Act—Penalties—Constitutionality	35-801
9. Fraternal benefit associations	35-901
10. Industrial life insurance	35-1001
11. Marine insurance	35-1101
12. Insurance agents other than life	35-1201
13. Fire, casualty, and marine insurance	35-1301

### Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

Sec.
35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.
35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.
35-103. Annual statements—Statement to be published in newspaper.
35-104. Companies organized outside of United States to file and publish statements.
35-105. Statement of business in District of Columbia.
35-106. Superintendent to make annual report.
35-107. Superintendent's reports to be bound.
35-108. Inquiries as to District companies.

§ 35-101 [5: 171]. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.

There shall be, and is hereby, established in the District a Department of Insurance, under the direction of the commissioners of the District. The said commissioners are authorized and directed to appoint a Superintendent of Insurance and one clerk. The said superintendent and clerk shall devote their services exclusively to the business of said department. Said superintendent shall have supervision of all matters pertaining to insurance, insurance companies, and beneficial orders and associations, subject only to the general supervision of the commissioners. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 645; June 30, 1902, 32 Stat. 534, ch. 1329.)

#### COMPILER'S NOTES

Insofar as any of the provisions of this chapter conflict with the Life Insurance Act of 1934 (48 Stat. 1177, ch. 672), chapters 3-8 of this title, they have been repealed by § 4 of ch. VI of said act which read as follows: "All laws or parts of laws, insofar as they relate to life insurance companies and the conduct of life insurance business, and

in conflict with any of the provisions of this act, are hereby repealed."

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

#### AMENDMENTS

The law originally provided for a salary of \$2,500 for the superintendent and a salary of \$1,000 for the clerk.

The law as amended in 1902 changed the salary of the superintendent to \$3,500.

The salaries are now provided for in the Classification Act, U. S. C., title 5, § 673.

#### CROSS REFERENCES

Application of this chapter to marine insurance companies, § 35-1102.

Department of Insurance and its powers and duties with respect to fire, casualty, and marine insurance, §§ 35-1301 to 35-1350.

Department of Insurance and its powers and duties with respect to life insurance, §§ 35-401 to 35-532.

Power of Superintendent to interpret the law, see note to § 35-102. *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

#### NOTES TO DECISIONS

##### SUPERINTENDENT

Superintendent of insurance is a subordinate official, appointed by and under the supervision and control of the Commissioners of the District. *Griffith v. Rudolph* (54 App. D. C. 350, 298 Fed. 672).

§ 35-102 [5: 172]. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

It shall be the duty of said superintendent to see that all laws of the United States relating to insurance or insurance companies, benefit orders, and associations doing business in the District are faithfully executed; to keep on file in his office copies of the charters, declarations of organization, or articles of incorporation of every insurance company, benefit association, or order, including life, fire, marine, accident, plate-glass, steam-boiler, burglary, cyclone, casualty, livestock, credit, and maturity companies or associations doing business in the District; and before any such insurance company, association, or order shall be licensed to do business in the District it shall file with said superintendent a copy of its charter, declaration of organization, or articles of incorporation, duly certified in accordance with law by the insurance commissioners or other proper officers of the state, territory, or nation where such company or association was organized; also a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein, and such other information as said superintendent may require; and if its principal office is located outside the District it shall appoint some suitable person, resident in said District, as its at-



torney, upon whom legal process may be served: *Provided, however,* That should said company or association neglect or refuse to appoint such attorney, or should such attorney absent himself from the District, said legal process may be served upon the Superintendent of Insurance of the District of Columbia. Said superintendent shall have power to make such rules and regulations, subject to the general supervision of the commissioners, not inconsistent with law, as to make the conduct of each company in the same line of insurance conform in doing business in the District. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11.)

#### COMPILER'S NOTE

This section as enacted also contained at the end of the first sentence "and the fees for filing with the superintendent such papers as are required by this section shall be ten dollars, to be paid to the collector of taxes, and no other license fee shall be required of such insurance companies or associations except as provided in sections six hundred and fifty-four (§ 35-1201) and six hundred and fifty-five (§ 35-1202) of this subchapter." However, § 35-1113 of this code provides for fees of marine insurance companies, § 35-1345 provides for fees of fire, marine, and casualty insurance companies, § 35-402 provides for fees of life insurance companies, and § 47-1901 provides for an annual license fee upon all insurance companies.

#### AMENDMENT

The 1912 amendment added "and such other information as said superintendent may require" following "a certificate setting forth that it is entitled to transact business and assume risks and issue policies of insurance therein," and added the proviso clause at the end of the first sentence.

#### CROSS REFERENCES

##### IN GENERAL

Application of this chapter to fire, casualty, and marine insurance companies, see notes to § 35-101.

Application to life insurance companies, see notes to § 35-101.

Enlargement of department for purpose of administering laws regulating marine insurance, § 35-1130.

Insurance under Employees' Compensation Act, § 35-205.

Liability policy or bond for motor carriers, § 44-301.

Motor vehicle liability policies; powers of department; form and requisites of policies, § 40-412.

Rules and regulations governing liability policy or bond for motor carrier, § 44-301.

#### REVOCATION OR SUSPENSION OF LICENSES, CERTIFICATES, AND PERMITS

Failure of domestic company to keep books, records, and files within the District, § 35-204.

Failure to file annual statements, §§ 35-103, 47-1805.

Failure to pay taxes, § 35-105.

Impairment of capital, § 35-202.

Impairment of capital or insolvency, § 35-201.

License or certificate of authority of life insurance companies, § 35-405, and notes.

Life insurance agents, § 35-426 et seq.

Marine insurance agents, § 35-1124.

Revocation or suspension of certificate of authority of fire, casualty, or marine insurance company, § 35-1306.

Revocation or suspension of license of fire, casualty, or marine insurance agent, § 35-1340 and notes.

Revocation or suspension of organization permits, § 35-506 et seq.

#### RULES AND REGULATIONS

Administration of the "Fire and Casualty Act," § 35-1304.

Governing annual statements, § 35-103.

Governing election to convert stock to mutual company, § 35-519.

Liquidation of life insurance companies, § 35-419.

Rules and regulations generally, § 1-226 and notes.

#### NOTES TO DECISIONS

##### DOMESTIC CORPORATIONS

Sections 646 and 647 of 1901 code (§§ 35-102, 35-103), relative to filing copies of charter, "were intended to apply to companies organized without the District and doing business within the District." *American Home Life Ins. Co. v. Drake* (30 App. D. C. 263).

##### GROUP HEALTH ASSOCIATION

When Group Health Association was not engaged in the business of insurance or indemnity, and not specifically exempted from the regulations pertaining to them, the superintendent could not challenge generally and without regard to features of insurance or indemnity as to validity of the incorporation. *Jordan v. Group Health Assn.* (71 App. D. C. 33, 107 Fed. (2d) 239).

Apart from any specific exemption, the business of a Group Health Association was not that of insurance so as to bring it within meaning of this act. *Jordan v. Group Health Assn.* (71 App. D. C. 33, 107 Fed. (2d) 239).

##### INTERPRETATION OF LAWS

"No provision of the law conferred or attempted to confer upon the superintendent of insurance the power to make and enforce an interpretation of the laws relating to insurance companies, agents, or brokers. Such power is a judicial one, that can be exercised by the courts alone." *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

##### RULES AND REGULATIONS

As to superintendent's power to promulgate regulations for the proper enforcement of the law, see *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

There is neither express nor implied authority in the superintendent to make rules or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

#### § 35-103 [5: 173]. Annual statements—Statement to be published in newspaper.

The said superintendent shall furnish, in December of each year, to every insurance company or association, local, domestic, and foreign, doing business in the District of Columbia, or its agent or attorney in the District, the necessary blank forms for the annual statements for such company or association, which shall be returned to the superintendent on or before the first day of March in each year, signed and sworn to by the president or vice-president and secretary or assistant secretary, or, if a foreign company, by its manager or proper representative within the United States, showing its true financial condition as of the next preceding 31st day of December, which shall include a statement of its assets and liabilities classified according to regulations made by the Superintendent of Insurance on that day, the amount and character of business transacted, losses sustained, and money received and expended during the year, and such other information as the said superintendent may deem necessary. Such annual statements shall be printed in at least one daily newspaper published in the District of Columbia, in the month of March in each year; and any such company or association failing to comply with the provisions aforesaid shall have its license to do business in the District revoked. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 647; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 18, 1911, 37 Stat. 22, ch. 26.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.



## AMENDMENTS

The 1902 amendment added "or vice-president" after "president" and "or assistant secretary" after "secretary."

The 1911 amendment substituted "local, domestic, and foreign, doing business in the District of Columbia" for "hereinbefore mentioned."

The 1901 code also contained the word "detailed" between the words "include a" and "statement of its assets and liabilities." The 1902 act changed this word to "classified," and it was omitted in the amendment of 1911.

## CROSS REFERENCES

Annual statements for fire, casualty, and marine insurance companies, § 35-1311.

Annual statement of companies operating upon Lloyd's plan, § 35-1324.

Application to fire, casualty, or marine insurance companies, § 35-101 and notes.

Application to life insurance, § 35-101 and notes.

Other provisions concerning annual statement and taxes, § 35-202.

Revocation or suspension of license, § 35-102 and notes.

Rules and regulations, § 35-102 and notes.

## NOTES TO DECISIONS

## GROUP HEALTH ASSOCIATION

Group Health Association cannot properly be brought within the laws relating to insurance or to organizations providing "for the payment of indemnity on account of sickness or accident." *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

## REVOCATION OF LICENSE

Under this section, there is authority in the Superintendent to revoke a company's license for failure on its part promptly to furnish him with an annual statement of its true financial condition. *Hutchins Mut. Ins. Co. v. Hazen*, (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35-104 [5: 175]. Companies organized outside of United States to file and publish statements.

The financial statements of insurance companies or associations, required hereby to be filed annually with the Superintendent of Insurance, shall set forth specifically the assets, liabilities, and conduct of the affairs within the United States of companies or associations organized outside of the territorial limits of the United States, and such statement shall be verified under oath by the manager and assistant manager or other proper officers of such companies or associations within the United States; and so much of this chapter as requires the publication of annual statements shall only extend to the statements respecting the affairs of such foreign companies or associations within the United States. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 649.)

## COMPILER'S NOTES

This section as enacted contains at the beginning the following provision: "No insurance company or association organized outside the territorial limits of the United States shall be licensed to do business in the District until it shall have complied with the laws of some one of said States requiring a deposit of not less than one hundred thousand dollars, or deposited in the registry of the supreme court of the District (District Court of the United States for the District of Columbia) United States or municipal bonds, the market value of which shall not be less than one hundred thousand dollars, to be approved by the superintendent of insurance and the Commissioners of the District, to be held and maintained unimpaired in the registry of said court as a reserve fund for the liquidation of any judgment or judgments that may be obtained against such insurance company or association in said court or any inferior court of competent jurisdiction in said District." However, § 35-1105 of this code provides for deposits by foreign

marine insurance companies, § 35-601 provides for deposits by foreign life insurance companies, and § 35-1326 provides the requirements for issuance of a certificate of authority to foreign fire, marine, and casualty insurance companies.

This section is superseded in whole or in part by chapter 18 of title 47.

## CROSS REFERENCES

Application to fire, casualty, and marine insurance companies, § 35-101 and notes.

Application to life insurance, § 35-101 and notes.

Other provisions concerning annual statement and taxes, § 35-103, 35-202.

Revocation or suspension of license, § 35-102 and notes.

§ 35-105 [5: 176]. Statement of business in District of Columbia.

Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the superintendent, during the month of January of each year, a statement of its business in said District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and said superintendent shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to said premium receipts, and all insurance companies of every description, except mutual fire insurance companies, shall pay to the collector of taxes before March first of each year a sum equal to two per centum of said premium receipts of the last preceding calendar year, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in sections 35-1201 to 35-1202; and upon the failure of any company to pay said taxes before March first, as aforesaid, the license of said company shall be revoked and a penalty of eight per centum per month shall be charged against the company, which, together with said taxes, shall be collected before said company shall be allowed to resume business. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329.)

## COMPILER'S NOTES

Act of August 17, 1937, 50 Stat. 676, ch. 690, title II, § 6, as amended May 16, 1938, 52 Stat. 358, ch. 223, § 2, set out as § 47-1806 of this code relating to taxation of insurance companies, provides for the payment of taxes "equal to 2 per centum of their policy and membership fees and net premium receipts."

This section is superseded in whole or in part by chapter 18 of title 47.

## AMENDMENT

Act of 1902 struck out quotation marks which were contained in the section as enacted in 1901.

## CROSS REFERENCES

Application to fire, casualty, and marine companies, § 35-101, and notes.

Application to life insurance, § 35-101, and notes.

Other provisions concerning annual statement and taxes, § 35-103, 35-202.

Taxation of marine insurance companies, § 35-1111.

## NOTES TO DECISIONS

## ASSESSMENT COMPANIES

This section does not apply to assessment companies organized solely for mutual protection. *American Home Life Ins. Co. v. Drake* (30 App. D. C. 263).



## GROUP HEALTH ASSOCIATION

Apart from any specific exemption, the business of ap-  
pellee Group Health Association is not that of insurance to  
bring it within this section of statute. *Jordan v. Group  
Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

## SECTION CONSTRUED

This section was construed in *District of Columbia v.  
Georgetown Gas Light Co.* (45 App. D. C. 63), relative to  
taxation of banks, gas, electric, and telephone companies,  
and continuing taxation on insurance companies in ac-  
cordance with 1901 code, § 650 (§ 35-105).

§ 35-106 [5: 177]. Superintendent to make annual re-  
port.

The Superintendent of Insurance shall report an-  
nually to the commissioners of the District, on or  
before the thirty-first day of March, the financial  
condition of each insurance company and association  
doing business in said District, as of the thirty-first  
day of December next preceding. (Mar. 3, 1901, 31  
Stat. 1292, ch. 854, § 651.)

## CROSS REFERENCES

Application to fire, casualty, and marine companies,  
§ 35-101 and notes.

Application to life insurance, § 35-101 and notes.

§ 35-107 [5: 177a]. Superintendent's reports to be  
bound.

After May 18, 1910, the annual reports of the  
Superintendent of Insurance shall be printed and  
bound in one volume, and shall be ready for distri-  
bution not later than the first day of the next regu-  
lar session of Congress thereafter. (May 18, 1910,  
36 Stat. 379, ch. 248.)

§ 35-108 [5: 178]. Inquiries as to District companies.

It shall be the duty of the said Superintendent of  
Insurance to ascertain whether the capital required  
by law or the charter of each insurance company or  
association organized under the laws of the District  
of Columbia has been actually paid up in cash and  
is held by its board of directors subject to their con-  
trol, according to the provisions of their charter, or  
has been invested in property worth not less than  
the full amount of the capital stock required by its  
charter; or, if a mutual company, that it has received  
and is in actual possession of securities, as the case  
may be, to the full extent of the value required by its  
charter; and the president and secretary of such  
company or association shall make a declaration  
under oath to said superintendent, who is hereby  
empowered to administer oaths when hereby re-  
quired, that the tangible assets exhibited to him rep-  
resent bona fide the property of the company or  
association, which sworn declaration shall be filed  
and preserved in the office of said superintendent;  
and any such officer swearing falsely in regard to  
any of the provisions hereof shall be deemed guilty  
of perjury and shall be subject to all the penalties  
prescribed by law in the District of Columbia for that  
crime. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 652.)

## CROSS REFERENCES

Application to fire, casualty, and marine insurance com-  
panies, § 35-101 and notes.

Application to life insurance, § 35-101 and notes.

Capital stock to be fully paid in cash, amount of capi-  
tal, § 35-202.

Impairment of capital, § 35-201.

Inspection and examination of insurance companies,  
§§ 35-201, 35-202, 35-418, 35-903, 35-1313.

## NOTES TO DECISIONS

## GROUP HEALTH ASSOCIATION

Whether the decision is made on the technical legal  
character of the arrangements, the letter of the bond,  
or on a practical consideration of the functions performed  
by Group Health Association and the methods used by it  
in performing them, it properly cannot be brought within  
the laws relating to insurance or to organizations pro-  
viding "for the payment of indemnity on account of sick-  
ness or accident." *Jordan v. Group Health Assn.* (71 App.  
D. C. 38, 107 Fed. (2d) 239).

Chapter 2.—PROVISIONS APPLICABLE TO MORE  
THAN ONE KIND OF INSURANCE

## Sec.

- 35-201. Life and fire insurance companies to maintain  
reinsurance reserves—Suspension of license  
upon impairment of capital stock—Penalty for  
acting for unlicensed company—Superintend-  
ent may make examination to determine im-  
pairment in capital, or insolvency.
- 35-202. "Health, accident, and life insurance companies"  
defined—Assets and capital stock required—  
Amount of policies—Taxation—Reports to Su-  
perintendent of Insurance—Examination by  
Superintendent of Insurance—Appeal to com-  
missioners—Fraternal beneficial and certain  
other organizations exempt.
- 35-203. Copy of application to be delivered with policy—  
Statements in application as defense.
- 35-204. Principal office to be in District of Columbia—  
Keeping and removing of records—Reincor-  
poration of companies chartered by special  
acts—Penalties—Prosecutions.
- 35-205. Compensation insurance regulations—Facts to be  
filed with Superintendent of Insurance—Ap-  
proval required—Withdrawal of approval—Pe-  
tition for review—Time for filing.

§ 35-201 [5: 174]. Life and fire insurance companies to  
maintain reinsurance reserves—Suspension of li-  
cense upon impairment of capital stock—Penalty  
for acting for unlicensed company—Superintend-  
ent may make examination to determine impair-  
ment in capital, or insolvency.

All life and fire insurance companies or associa-  
tions licensed to do business in said District shall be  
required to maintain a reinsurance reserve fund; and  
whenever any such company or association not ex-  
cepted from the operations hereof shall become in-  
solvent or impaired to the extent of twenty-five per  
centum of its capital stock it shall be the duty of the  
superintendent to suspend its license; and unless  
such impairment or insolvency shall be made good  
within sixty days thereafter, it shall be the duty of  
the Superintendent of Insurance to revoke its license  
to do business in the District; and it shall be unlaw-  
ful for any insurance company, association, or order  
to do business in the District without a license, or  
to continue business after the revocation of its li-  
cense, and any such company or association violating  
this provision shall be liable to a penalty of twenty  
dollars for each day it transacts business without  
such license, to be recovered by the commissioners  
of the District by an action of debt in any court of  
the District of competent jurisdiction. And any per-  
son who shall aid in carrying on the business of any  
such company, or shall act as agent or solicitor for  
any company not licensed to do business in said Dis-  
trict, or whose license is revoked, shall be guilty of  
a misdemeanor, and on conviction thereof in the



police court of said District shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section 35-102, subject, however, to the provisions of sections 35-1201, 35-1202: *Provided*, That the Superintendent of Insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648.)

#### COMPILER'S NOTES

This section as enacted contains at the beginning the following: "No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and." Sections 35-1103 and 35-1316, of this code provide for the paid-in capital stock of fire insurance companies.

The act of June 19, 1934, 48 Stat. 1177, ch. 672, ch. VI, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8 of this title) are hereby repealed." See notes to § 35-101.

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

#### CROSS REFERENCES

Application of this chapter to marine insurance companies, § 35-1102.

Benefits from health and accident insurance are not subject to claims of creditors, § 35-717.

Capital and surplus of fire, casualty, and marine insurance companies, § 35-1316.

Capital, reserves, and deposits of life insurance companies, § 35-415 to 35-417.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Impairment of capital, § 35-202.

Insolvency or impairment of capital or surplus of fire, casualty, or marine companies, receivership, §§ 35-1306, 35-1308 to 35-1310.

Inspection and examination of insurance companies, §§ 35-108, 35-202, 35-418, 35-903, 35-1313.

Licensing fire, casualty, and marine insurance companies, § 35-1305.

Life insurance companies may reinsure, § 35-537.

Minors may contract for health and accident insurance, § 35-430.

Revocation or suspension of license, § 35-102 and notes.

Stock required to be fully paid for in cash, § 35-108.

§ 35-202 [5: 179]. "Health, accident, and life insurance companies" defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

Every corporation, joint-stock company, or association not exempt herein, transacting business in

the District of Columbia, which collects premiums, dues, or assessments from its members or from holders of its certificates or policies, and which provides for the payment of indemnity on account of sickness or accident, or a benefit in case of death, shall be known as "health, accident, and life insurance companies or associations." No such company or association shall transact business within the District of Columbia unless it shall have in assets or in capital stock fully paid up in cash, or in both together, not less than twenty-five thousand dollars as a capital or guarantee fund; which assets may be invested in United States, State, county, municipal bonds, and bonds of the District of Columbia, or railroad bonds; but investments in the bonds of railroads shall be limited to the bonds of those railroads which have paid dividends on their capital stock for the ten years immediately previous to the date of the investment; or in improved real estate, or in first mortgages on improved real estate; but no loan on real estate shall be made for an amount exceeding seventy per centum of its assessed value, such investments to be approved by the Superintendent of Insurance of the District of Columbia. No such health, accident, and life insurance company or association, transacting on August 15, 1911, or thereafter the business of health, accident, and life insurance, or either or all said kinds of insurance, in the District of Columbia shall issue policies or certificates providing, either singly or in aggregate, a greater accident or death benefit than five hundred dollars, or a greater weekly indemnity than twenty dollars, on any one person unless such company or association has in assets or in capital stock fully paid up in cash, or in both together, not less than one hundred thousand dollars invested and approved as aforesaid. Every such company or association shall pay to the collector of taxes for the District of Columbia a sum of money, as tax, equal to one per centum of all moneys received from members of policy or certificate holders within the District of Columbia, said tax to be paid on or before the 1st day of March of each year on the amount of such income for the year ending December 31st next preceding; and shall also file annually with said Superintendent of Insurance, on or before the 1st day of March of each year, a sworn statement, on blanks furnished by said Superintendent of Insurance, showing its true financial condition, income, disbursements, assets, and liabilities on the 31st day of December next preceding, and such other information as said Superintendent of Insurance may require; and shall pay to the said collector of taxes ten dollars for filing such statement. Said Superintendent of Insurance shall examine from time to time and at least as often as once a year all companies or associations described herein; and when he finds the capital stock of any such company impaired or its assets reduced in value to an amount less than required by the provisions hereof he shall at once give notice of said fact to said company or association, and unless said impairment is made good within sixty days after said notice, it shall be the duty of said superintendent to revoke or suspend the license of said company or association until such impairment shall have been



made good; and any company or association that issues policies or certificates of insurance as described herein without a license from said superintendent or during a suspension thereof, as herein provided, shall be fined not less than twenty dollars nor more than one hundred dollars per day: *Provided*, That if any such company or association shall feel aggrieved by the decision of said superintendent concerning the investment or impairment of its assets or capital stock, it shall have the right to appeal, within ten days, from the decision of said superintendent to the Board of Commissioners of the District of Columbia, who shall prescribe rules and regulations for the hearing of said appeal, and their decision shall be final: *Provided also*, That when any such company or association shall have complied with the provisions contained herein, the Superintendent of Insurance shall issue to it a license to transact its business in the District of Columbia: *Provided, however*, That nothing contained in this section shall interfere with or abridge the rights of any fraternal beneficial association licensed to transact business under sections 35-901 to 35-917, or incorporated by special act of Congress: *And provided further*, That nothing contained herein shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States government service, or solely of employees of any individual, company, firm, or corporation.

Nothing herein contained shall repeal or affect the other provisions of sections 35-101 to 35-108 regulating foreign corporations, or corporations, associations, or companies who are nonresidents of the District of Columbia (to whom the provisions of this section shall also be applicable), or the provisions of section 35-108 relating to inquiry into the affairs of District companies. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 653; Aug. 15, 1911, 37 Stat. 16, ch. 12, §§ 1, 2.)

#### COMPILER'S NOTES

The first paragraph of this section is the first section of the act of August 15, 1911. The second paragraph of this section is the proviso clause of the second section of that act. The first part of § 2 of the act of August 15, 1911, was "That all Acts and parts of Acts inconsistent herewith be, and the same are hereby, repealed: *Provided*, That."

Act of August 15, 1911, also contained a provision making the second sentence effective 90 days after its passage.

This section is, largely if not wholly, superseded by chapter 13 of this title, see notes to § 35-201.

This section is superseded, in part, by chapter 18 of title 47.

#### AMENDMENT

Prior to the 1911 amendment, which struck out the original section, this section contained provisions relating to companies transacting life insurance on the assessment plan, exempting them from the provisions of § 35-108 and providing for the furnishing of annual statements by such companies.

#### CROSS REFERENCES

Appeals under "Fire and Casualty Act," §§ 35-1348, 35-1349.

Capital and surplus of fire, casualty, and marine insurance companies, § 35-1316.

Capital, reserves, and deposits of life insurance companies, §§ 35-415 to 35-417.

Excepted from application of marine insurance provisions, § 35-1103.

Health and accident insurance may be written under the "Fire and Casualty Act," § 35-1314.

Inspection and examination of insurance companies, §§ 35-108, 35-201, 35-418, 35-903, 35-1313.

Investments for life insurance companies, §§ 35-535, 35-536.

Investments for marine insurance companies, §§ 35-1118, 35-1119.

Other provisions concerning annual statement and taxes, §§ 35-103 to 35-105, 35-1311, 47-1801 et seq.

Other provisions concerning investments, § 35-1321.

Provisions for formation of companies, § 35-501, subd. (d).

Required policy provisions for health and accident insurance, §§ 35-712, 35-1332.

Revocation or suspension of license, see notes to § 35-102.

#### NOTES TO DECISIONS

##### APPLICATION FOR REINSTATEMENT

This provision applies to an application for the reinstatement of a lapsed policy. *Metropolitan Life Ins. Co. v. Burch* (39 App. D. C. 397).

##### BENEFIT ORDER

Grand Lodge of Brotherhood of Railroad Trainmen is a benefit order, within the meaning of the section, as amended, and subject to its provisions. *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184).

##### ENTIRE APPLICATION

Copy of entire application must be attached; "it is not left to the discretion of the insurer to select such parts of the application as it may deem material for delivery with its policy." *Metropolitan Life Ins. Co. v. Hawkins* (31 App. D. C. 493).

##### FRAUDULENT REPRESENTATIONS

This applies to fraudulent representations in application for previous policy made part of second policy. *Northwestern Mut. Life Ins. Co. v. Gott* (62 App. D. C. 379, 68 Fed. (2d) 426).

##### GROUP HEALTH ASSOCIATION

Apart from any specific exemption, the business of appellee Group Health Association is not that of insurance to bring it within this section of statute. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

The appellee Group Health Association held to be a distributing, not an accumulating agency, and to require it to maintain a guarantee fund was not the intent of Congress. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

It is not necessary to decide whether the exemption or definition of health and accident insurance companies has any effect upon the regulations prescribed by other sections of the code. Apart from any specific exemption the business of the Group Health Association is not that of insurance so as to bring it within those sections. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

##### PAYMENT OF INDEMNITY

This provision does not include all "insurance" companies, but only those which provide for the "payment of indemnity on account of sickness." The statute does not include necessarily contracts "to indemnify," but is limited to those which provide for the "payment" of indemnity. The word "payment" is not used as equivalent to "indemnify." *Group Health Assn. v. Moor* ((D. C.-D. C.), 24 Fed. Supp. 445).

##### REPORT BY RECEIVERS

Where business of insurance association has been so injured by ill will and protracted litigation among the stockholders that it has become insolvent, and its capital and reserve have been seriously impaired, receivers pendente lite were properly appointed to take possession of its assets and to report on the condition of its affairs. *Provident Relief Assn. v. Vernon* (57 App. D. C. 235, 19 Fed. (2d) 709).

##### RESERVES

There is no provision of the general law broad enough to cover regulations governing in the minutest detail the operation and business of an insurance company, but



the statute itself makes a clear distinction between stock companies and mutual companies with respect to maintaining a reserve. *Hutchins Mut. Ins. Co. v. Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

§ 35-203 [5: 183]. Copy of application to be delivered with policy—Statements in application as defense.

Each life insurance company, benefit order, and association doing a life insurance business in the District of Columbia shall deliver with each policy issued by it a copy of the application made by the insured so that the whole contract may appear in said application and policy, in default of which no defense shall be allowed to such policy on account of anything contained in, or omitted from, such application. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 657; June 30, 1902, 32 Stat. 534, ch. 1329.)

#### COMPILER'S NOTE

This section is largely superseded by §§ 35-703, subd. (3); 35-705, subd. (3); 35-711, subd. (2).

#### AMENDMENT

Prior to its amendment in 1902 this section read "Each life insurance company doing business in the District of Columbia shall attach to each policy issued by such company a copy of the application made by the insured, so that the whole contract may appear in said application and policy."

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

Prior to the amendment by the act of June 30, 1902, this section "did not cover policies (certificates) issued by fraternal beneficial associations." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

##### IN GENERAL

"This section was intended to remedy a mischief and is to be given a liberal interpretation to that end." *Metropolitan Life Ins. Co. v. Burch* (39 App. D. C. 397).

##### ENTIRE CONTRACT

Purpose in adopting this section was to compel insurance companies, whether old line or fraternal, to state the entire contract either in the policy or the policy and application, so that the insured would be able to find the terms defining his obligations and rights as a policyholder in not more than two papers. *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

##### INCORPORATION BY REFERENCE

This section could not be satisfied by making a section of the constitution of the insurer a part of the contract by reference, for it requires an actual incorporation in the certificate and application of every element of the agreement "so that the whole contract may appear in said application and policy." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

##### MISSTATEMENT OF AGE

Misstatement of age is no defense where copy of application was not delivered "with the policy or at any other time." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

##### ORAL APPLICATION

This provision does not extend to an oral application. *Washington Fidelity Nat. Ins. Co. v. Burton* (287 U. S. 97, 77 L. Ed. 196, 53 Sup. Ct. 26, revg. 61 App. D. C. 3, 56 Fed. (2d) 900).

##### PRELIMINARY REPORT OF AGENT

A preliminary report, signed only by the agent, intended for the general information of the company and not referred to in the policy, is no part of the contract of insurance

and need not be attached thereto. *Griffin v. Metropolitan Life Ins. Co.* (36 App. D. C. 8).

#### PROVISIONS OUTSIDE CONTRACT

"No provision in the rules or elsewhere of an insurance company or fraternal order which was not physically embodied in the policy or application should be regarded as a part of the contract." *Brotherhood of Railroad Trainmen v. Groves* (48 App. D. C. 151, cert. den. 248 U. S. 587, 63 L. Ed. 434, 39 Sup. Ct. 184.)

§ 35-204 [5: 183a]. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

Any corporation now or hereafter formed or organized under any provision of law in force and effect in the District of Columbia to engage in an insurance business shall maintain its principal office within said District and shall keep its books, records, and files therein, and shall not remove from said District either its principal office or its books, records, or files without the permission of the Commissioners of the District of Columbia first had and obtained: *Provided, however*, That nothing contained in this section shall be construed to apply to the books, records, and files of any such corporation kept in a branch-office agency of such corporation, which books, records, and files relate solely to the business transacted by the said branch-office agency: *And provided further*, That any insurance corporation created by special Act of Congress is authorized upon resolution of its board of directors or trustees to reincorporate under the laws of any State of the United States, a certified copy of such resolution of such board of directors or trustees having first been filed in the office of the Superintendent of Insurance of the District of Columbia and recorded in the office of the Recorder of Deeds of the District of Columbia. Upon compliance with the above conditions, the assets of the said corporation shall thereby become vested in the new corporation. Said new corporation shall faithfully carry out any and every right, obligation, and liability of said original corporation.

Any corporation violating any of the provisions of this section shall forthwith forfeit its charter, which forfeiture shall operate as a revocation of its license to do business within said District.

Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than \$300 or be imprisoned for not more than ninety days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the police court of the District of Columbia in the name of the District of Columbia by the corporation counsel thereof or any of his assistants. (Mar. 3, 1901, ch. 854, as added May 17, 1932, 47 Stat. 158, ch. 189.)

#### CROSS REFERENCES

Application to fire, casualty, and marine companies, see notes to § 35-201.

Application to life insurance, see notes to § 35-201.

Revocation or suspension of license, see notes to § 35-102.



§ 35-205 [5: 183b]. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Superintendent of Insurance its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Superintendent of Insurance shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Superintendent of Insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable: *Provided*, That upon petition of the company or association or any other party aggrieved the opinion of the Superintendent of Insurance shall be subject to review by the District Court of the United States for the District of Columbia: *Provided further*, That any petition for review shall be filed with said court within thirty days after the rendition of opinion by the Superintendent of Insurance. (Mar. 3, 1901, ch. 854, as added April 16, 1934, 48 Stat. 592, ch. 144.)

### Chapter 3.—LIFE INSURANCE ACT—DEFINITIONS

Sec.

35-301. Short title—Application of law.

35-302. Definitions.

§ 35-301 [5: 216]. Short title—Application of law.

Chapters 3 to 8 of this title shall be known as the "Life Insurance Act." All life-insurance companies now or hereafter incorporated or formed by authority of any general or special law of this District or by other Act of Congress, and all foreign and alien companies authorized to do business in this District, shall be subject to said chapters. (June 19, 1934, 48 Stat. 1127, ch. 672, § 1, ch. I.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, ch. VI, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any of the provisions of this act (Life Insurance Act, Chapters 3-8), are hereby repealed."

Section 5, chapter VI, of this act provided as follows: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCE

Application to existing companies, § 35-520.

§ 35-302 [5: 216a]. Definitions.

In chapters 3-8 of this title, unless the context otherwise requires—

"District" means the District of Columbia;

"Commissioners" means the commissioners of the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia;

"Department" means the Department of Insurance of the District of Columbia;

"Company" means any life insurance company and includes a corporation, company, or association of persons engaged in or proposing to engage in the business of life insurance;

"Domestic company" means an insurance company organized under the laws of the District, or formed or organized under an Act of Congress;

"Foreign company" means an insurance company organized under the laws of any State of the United States, or of any Territory or insular possession of the United States;

"Alien company" means a company organized under the laws of any country other than the United States or a Territory or insular possession thereof;

"Person" includes individuals, corporations, associations, and partnerships; personal pronouns include all genders; the singular includes the plural, and the plural includes the singular;

The term "general agent" in chapters 3-8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums, and/or issue policies in its behalf.

The term "agent" in chapters 3-8 of this title shall include an individual, copartnership, or corporation authorized in writing by a company, association, or exchange to solicit risks and collect premiums in its behalf.

The term "solicitor" in chapters 3-8 of this title shall include any individuals authorized in writing by a duly-licensed agent to solicit risks and collect premiums in behalf of said agent.

The terms "agent" and "solicitor" shall not include officers or salaried employees of any company, association, or exchange which is authorized to transact business in the District, who do not solicit, negotiate, or place risks.

The term "broker" in chapters 3-8 of this title shall include consultant, surveyor and/or any person, partnership, association, or corporation who, for money, commission, or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds;

"Net premium receipts" means gross premiums received less the sum of the following:

1. Premiums returned on policies canceled or not taken;

2. Premiums paid for reinsurances where the same are paid to companies duly licensed to do business in the District; and

3. Dividends paid in cash or used by policyholders in payment of renewal premiums or in purchase of paid-up additional insurance.

"Surplus" means the excess of admitted assets over liabilities and capital, in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock;

"Liabilities" means all debts, due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by chapters 3-8 of this title;

"Industrial life insurance" means that form of life insurance, either (a) under which the premiums are



payable weekly, or (b) under which the premiums are payable monthly or oftener, if the face amount of insurance provided in the policy is less than \$1,000, and the words "industrial policy" are plainly printed upon the policy as a part of the descriptive matter. (June 19, 1934, 48 Stat. 1128, ch. 672, § 2, ch. I.)

#### Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

Sec.

- 35-401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.
- 35-402. Fees and charges.
- 35-403. Refunds of excess in fees, charges, or taxes.
- 35-404. Certificate of authority—Effect—Issuance.
- 35-405. Revocation of certificate of authority—Notice.
- 35-406. Annual statement forms to be furnished by superintendent.
- 35-407. Annual statement—Verification—Failure to make.
- 35-408. Penalty for false statement.
- 35-409. Deceptive statements prohibited.
- 35-410. Contents of advertisements—Penalty for violation.
- 35-411. Defamation of companies—Penalty.
- 35-412. Superintendent to have power to issue subpoenas—Enforcement.
- 35-413. Enforcement of superintendent's orders or actions.
- 35-414. False statements in application for insurance.
- 35-415. General deposit—Amount—Deposits outside District.
- 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.
- 35-417. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.
- 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.
- 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.
- 35-420. When company to be deemed insolvent.
- 35-421. Reinsurance by superintendent.
- 35-422. Valuation of assets—Rule—Discretion of superintendent.
- 35-423. Appointment of superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.
- 35-424. Political contributions prohibited—Penalty—Immunity of witnesses.
- 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.
- 35-426. Suspension or revocation of license—Grounds for—Notice of—Hearing—Penalty.
- 35-427. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.
- 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.
- 35-429. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.
- 35-430. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.
- 35-431. Assessment companies shall not be formed, admitted, or licensed.
- 35-432. Appeal from superintendent to commissioners.

§ 35-401 [5:217]. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

There shall be continued in the District a department charged with the execution of the laws relating to insurance, to be called the "Department of Insurance of the District of Columbia." At the head of such department there shall be a Superintendent of Insurance, who shall devote his entire service to the department. He shall be appointed by and hold his office at the pleasure of the commissioners. The superintendent, during his term of office, shall not be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the commissioners. In said department there shall be also two deputy superintendents and such other personnel as may be necessary within appropriations annually made by Congress for said department. The compensation of the superintendent, deputy superintendents, and other personnel shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, § 673).

In case of the absence or inability of the superintendent, or in the event of the removal of the superintendent, and pending the appointment of his successor, one of the deputy superintendents shall perform the duties of the superintendent.

The commissioners shall provide the department with an official seal, which shall be the seal of the District of Columbia surrounded by a border in which shall appear "Department of Insurance of the District of Columbia."

Every certificate and other document or paper executed by such superintendent, or his deputies, in pursuance of any authority conferred upon him by law and sealed with the seal of his office, and all copies of papers certified by him or by his deputies and authenticated by said seal, shall, in all cases, be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceeding in any court of this District.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as it may be provided otherwise herein.

The superintendent shall report annually to the commissioners his official transactions, and shall include in such report abstracts of the annual statements of the several companies and an exhibit of the financial condition and business transactions of the same as shown by their annual statements. He shall also include therein a statement of the receipts and expenditures of the department for the preceding year and such recommendations relative to insurance and the insurance laws of the District as he shall deem proper.

The superintendent is authorized to attend and participate in the meetings of the national convention of insurance commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper



conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the commissioners. The actual expense of such attendance by the superintendent and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, § 1, ch. II.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8), are hereby repealed."

Section 5, chapter VI, of this act provides as follows: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCES

Application to existing companies, § 35-520.

Other provisions concerning insurance department, § 35-101 et seq.

#### § 35-402 [5: 217a]. Fees and charges.

All charges and fees provided for in this section shall be paid to the collector of taxes of the District of Columbia and deposited in the treasury of the United States to the credit of the District.

For filing charter or articles of incorporation or association, or deed of settlement or copy thereof, required by law, \$10; for each company certificate of authority, \$10; for license of each general agent, \$50; for license of each agent or solicitor, \$5; for license of each broker, \$50. All licenses for brokers, insurance companies, their agents or solicitors, who may apply for permission to do business in the District of Columbia, shall date from the first of the month in which application is made and expire on the 30th day of April following, and payment shall be made in proportion. (June 19, 1934, 48 Stat. 1130, ch. 672, § 2, ch. II.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

#### CROSS REFERENCES

Licensing agents, § 35-425 et seq.

Licensing brokers, § 35-428.

#### § 35-403 [5: 217b]. Refunds of excess in fees, charges, or taxes.

Whenever it appears to the satisfaction of the superintendent that because of some error, mistake, or erroneous interpretation of a statute, a company has paid fees, charges, or taxes in excess of the amount legally chargeable against it, the superintendent shall, on application of the company, present the matter to the commissioners, with the view of refunding to such company any such excess, or applying the excess or portion thereof toward the payment of fees, charges, or taxes already due from such company. (June 19, 1934, 48 Stat. 1131, ch. 672, § 4, ch. II.)

#### CROSS REFERENCES

General provisions concerning tax refunds, § 47-1017 et seq.

Refund of fees when license is refused, § 47-1018.

#### § 35-404 [5: 217c]. Certificate of authority—Effect—Issuance.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to entitle it to do business therein. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate. No company shall transact any business of insurance in the District until it shall have received a certificate of authority as herein prescribed and no company shall transact any business of insurance not specified in such certificate of authority. Before a company shall be authorized to transact business within the District the superintendent shall be satisfied by such examination as he may make or such evidence as he may require that such company is duly qualified under the laws of the District to transact business therein. (June 19, 1934, 48 Stat. 1131, ch. 672, § 5, ch. II.)

#### CROSS REFERENCES

Assessment companies forbidden, § 35-431.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Revocation of certificate of authority, § 35-405.

#### § 35-405 [5: 217d]. Revocation of certificate of authority—Notice.

If the superintendent shall find that a domestic, foreign, or alien company is insolvent, or that it does not have the surplus required by chapters 3-8 of this title and invested as by chapters 3-8 of this title required, or that it does not have the surplus or whose policyholders do not have the contingent assessment liability required by chapters 3-8 of this title; or, if an alien company, that it does not have a surplus required by chapters 3-8 of this title and invested as by chapters 3-8 of this title required in the United States; or, if an alien company, that it does not have the deposit required by chapters 3-8 of this title; or, if he finds that the authorized capital of any domestic, foreign, or alien capital stock company is impaired and the company is not promptly restoring the deficiency or reducing its capital; or, that any domestic, foreign, or alien company has violated or failed to comply with the law or its charter; or, that the company or any of its officers has wilfully refused or failed to submit to examination or to perform any obligation relative thereto, he may revoke the certificate of authority of such company and thereafter no new insurance business shall be transacted by the company or its agents until the superintendent shall issue a new certificate of authority to the company.

The superintendent shall not revoke the certificate of authority of any company until he has given the company not less than thirty days' notice of the proposed revocation and of the grounds alleged therefor and has afforded the company an opportunity to show that its certificate of authority should not be revoked. When the further transaction of business would be hazardous to the policyholders of any company, the superintendent may suspend the certificate



of authority without giving notice as above required. (June 19, 1934, 48 Stat. 1131, ch. 672, § 6, ch. II.)

#### CROSS REFERENCE

Revocation and suspension of licenses, see notes to § 35-102.

**§ 35-406 [5: 217e]. Annual statement forms to be furnished by Superintendent.**

The superintendent shall, annually, in the month of December, furnish to each of the companies authorized to do business in the District and required to make an annual statement to the Department two or more blanks in form adapted for such statements, and which shall conform as nearly as may be practicable to the form of statement from time to time adopted by the national convention of insurance commissioners. (June 19, 1934, 48 Stat. 1132, ch. 672, § 7, ch. II.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

**§ 35-407 [5: 217f]. Annual statement — Verification — Failure to make.**

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31, immediately preceding, on forms furnished by the superintendent. Such statement shall be verified by the oaths of the president and secretary of the company, or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. In case a company shall fail to make and file its annual statement within the time herein prescribed its authority to transact business in the District shall thereupon terminate. (June 19, 1934, 48 Stat. 1132, ch. 672, § 8, ch. II.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

**§ 35-408 [5: 217g]. Penalty for false statement.**

A director, officer, agent, or employee of any company who wilfully and knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than two nor more than ten years. A person who wilfully and knowingly makes oath to any such false statement shall be guilty of perjury. (June 19, 1934, 48 Stat. 1132, ch. 672, § 9, ch. II.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

**§ 35-409 [5: 217h]. Deceptive statements prohibited.**

No company doing business in the District or agent thereof shall state or represent by advertisement in any newspaper, periodical, or magazine, or by any sign, circular, card, policy of insurance, or certificate of renewal thereof or otherwise that any funds or

assets are in possession of such company which are not actually possessed by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. (June 19, 1934, 48 Stat. 1132, ch. 672, § 10, ch. II.)

#### COMPILER'S NOTE

This section is superseded in whole or in part by chapter 18 of title 47.

**§ 35-410 [5: 217i]. Contents of advertisements—Penalty for violation.**

Every advertisement or public announcement and every sign, circular, or card issued by any domestic, foreign, or alien company doing business in the District representing its financial standing shall exhibit the amount of the capital stock actually paid up in cash, the assets owned, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made to the superintendent by such company. Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the superintendent.

Any violation of this section or section 35-409 shall be a misdemeanor, and any person convicted of such violation shall, for the first offense, be liable to a fine of not more than \$500, and for each subsequent offense shall be liable to a fine of not more than \$1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, § 11, ch. II.)

**§ 35-411 [5: 217j]. Defamation of companies—Penalty.**

It shall be unlawful for any company now or hereafter doing business in the District, or any officer, director, clerk, employee, general agent, agent, or solicitor thereof, broker or any other person, to make, verbally or otherwise, publish, print, distribute, or circulate, or cause the same to be done, or in any way to aid, abet, or encourage the making, printing, publishing, distributing, or circulating of, any pamphlet, circular, article, literature, or statement of any kind which is defamatory of any company now or hereafter doing business in the District, or which contains any false criticism or false statement calculated to injure such company in its reputation or business; and any officer, director, clerk, employee, general agent, agent, or solicitor of any company, broker or any other person, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$100. (June 19, 1934, 48 Stat. 1133, ch. 672, § 12, ch. II.)

**§ 35-412 [5: 217k]. Superintendent to have power to issue subpoenas—Enforcement.**

In the examination of any company as provided for in chapters 3-8 of this title the superintendent shall have power to issue subpoenas in the name of the



Chief Justice of the District Court of the United States for the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents before said superintendent.

If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued as herein provided, then and in that event the superintendent may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court, or any justice thereof, hereby is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that court. (June 19, 1934, 48 Stat. 1133, ch. 672, § 13, ch. II.)

**§ 35-413 [5: 217l]. Enforcement of superintendent's orders or actions.**

The superintendent may, through the corporation counsel of the District, invoke the aid of any court of competent jurisdiction to enforce any order made or action taken by him in pursuance of law. (June 19, 1934, 48 Stat. 1133, ch. 672, § 14, ch. II.)

**§ 35-414 [5: 217m]. False statements in application for insurance.**

The falsity of a statement in the application for any policy of insurance shall not bar the right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company. (June 19, 1934, 48 Stat. 1133, ch. 672, § 15, ch. II.)

**CROSS REFERENCES**

Form and contents of insurance contracts, §§ 35-703 to 35-712.

Special provisions governing industrial policies, § 35-1001 et seq.

**NOTES TO DECISIONS**

**VALIDITY OF POLICY**

To void a life insurance policy on the ground of false representation, the answer must not only have been untrue, but it must have been with reference to a material matter. *Kaplan v. Manhattan Life Ins. Co.* (71 App. D. C. 250, 109 Fed. (2d) 463).

**§ 35-415 [5: 217n]. General deposit—Amount—Deposits outside District.**

Every company desiring to transact business in the District shall, as a prerequisite to the issuance of a certificate of authority, deposit, as herein provided, approved securities of not less than \$100,000 market value. In the case of domestic companies, such deposit shall be made in the District as prescribed under section 35-416: *Provided*, That the deposit of every domestic company heretofore organized under the provisions of the laws of the District or other Act of Congress may, in the discretion of the superintendent, be limited (1) for stock companies, to an amount equal to the capital stock outstanding on June 19, 1934; (2) for nonstock companies, to such amount as in the opinion of the superintendent would be required from stock companies of comparable size. In no case shall the deposit of a domestic company be less than \$25,000 in value. In the case of foreign or alien companies, the deposit may be made as provided under section

35-416, or may be made with the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders.

In the case of a deposit made with an official outside the District, a certificate of deposit from said official shall be filed with the superintendent, showing the character of the deposit, before a certificate of authority to transact business in the District may be issued, and, if the securities so deposited are not of the class authorized by chapters 3-8 of this title for investments of companies, the superintendent may require an additional deposit in approved securities. (June 19, 1934, 48 Stat. 1133, ch. 672, § 16, ch. II; May 20, 1940, 54 Stat. —, ch. 204.)

**AMENDMENT**

The 1940 amendment substituted all that part of this section before the proviso for "Every company desiring to transact business in the District shall before being licensed, deposit approved securities of not less than \$100,000 market value with the superintendent or the supervising official of any State, Territory, or insular possession of the United States authorized to accept such deposit, which shall be held for the benefit of all policyholders:" inserted the words, "in the discretion of the superintendent" in the proviso clause, inserted "in value" after "\$25,000" in the third sentence and added the fourth sentence.

In the second paragraph the amendment of 1940 substituted "In the case of a deposit made with an official outside the District" for "If such deposit is made with an official other than the superintendent" and substituted "a certificate of authority" for "a license."

**CROSS REFERENCES**

Assessment companies forbidden, § 35-431.

Other provision concerning reserves and capital, § 35-201 et seq.

**§ 35-416 [5: 217o]. Custody of general deposits—Collection of income—Substitution of securities—Required securities.**

When any company is required by chapters 3-8 of this title to make a deposit in the District, such deposit shall be in securities of the class authorized by chapters 3-8 of this title for investments of companies, and shall be delivered by the company to the secretary of the Board of Commissioners of the District and the auditor of the District, who shall receive and hold the same subject to the lawful orders of the superintendent, and who shall be responsible for the safe-keeping of all securities deposited or delivered under the authority of this section. The company shall have the right to collect the income on deposited securities so long as it continues solvent and complies with the laws of the United States and of the District, and it shall have the right to substitute for such securities other securities, provided such substituted securities are of the character, amount, and value required by this section, and are approved by the superintendent: *Provided*, That not less than \$25,000 of such deposit shall at all times consist of bonds or other evidences of indebtedness of the United States or of any state of the United States, or of any county or incorporated city of any state of the United States, and that securities of a class different from such bonds or other evidences of indebtedness shall not in any case be accepted for de-



posit except with the specific approval of and at values determined by the superintendent.

If the value of securities deposited by any company shall decline, the superintendent may require the company to make a further deposit, in order that the amount and value of the deposit required by chapters 3-8 of this title shall at all times be maintained. (June 19, 1934, 48 Stat. 1134, ch. 672, § 17, ch. II; May 20, 1940, 54 Stat. —, ch. 204.)

#### AMENDMENT

This section prior to its amendment in 1940 read as follows: "When any company is required by the laws of the District, or of any State or county, or by other competent authority, to make a deposit with an insurance supervising official, or other financial officer, and where said deposit is made by the company in bonds or other evidence of indebtedness of the United States, or of any State of the United States, or of any county or incorporated city of any State of the United States, the said securities shall be delivered to the Secretary of the Board of Commissioners of the District of Columbia, and the Auditor of the District of Columbia, who shall receive and hold the same, subject to the lawful orders of the Superintendent of Insurance, and who shall be responsible for the safekeeping of all securities deposited or delivered under the authority of this section, so long as the company continues solvent and complies with the laws of the United States and of the District of Columbia, and it may in that event collect the income on such securities. The company shall have the right to substitute therefor other securities, required by this section as lawful investment, provided such substitute securities are of the character, amount, and value called for by this section and are approved by the Superintendent of Insurance. If the value of the securities deposited by any company shall decline below the amounts so required, the company shall make a further deposit and maintain the deposit in the amount and value so required."

#### CROSS REFERENCES

Investment permitted, §§ 35-535, 35-536.

Other provisions concerning reserves and capital, § 35-201 et seq.

§ 35-417 [5: 217p]. Withdrawal of general deposits—Notice—Examination—Bond—Reinsurance—Notice.

When a company determines to discontinue its business or to cease to do business in the District and desires to withdraw its deposit made in the District pursuant to chapters 3-8 of this title the superintendent shall, upon the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the District once a week for three consecutive weeks. After such publication he shall deliver to such company or its assigns the securities so deposited when he is satisfied upon examination and investigation made by him or under his authority and upon the oaths of the president and secretary or other chief officers of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished: *Provided*, That the superintendent may require any company so withdrawing from the District to furnish bond to cover any undisclosed or contingent liabilities.

Upon a company being wholly reinsured the superintendent may deliver to it or to its assigns all securities deposited by it upon compliance with the following condition: The reinsuring company shall assume and agree to discharge all liabilities of every kind due and to become due which the deposit of the reinsured company was made to secure. Such rein-

suring company shall have a deposit in the District or with some State official in the United States in securities recognized by this law as lawful investments of the company in an amount and value not less than the deposit required of the reinsured company. The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company assumed by the reinsuring company. The superintendent shall give notice of such reinsurance agreement and of the application for the deposit once a week for three consecutive weeks in a newspaper of general circulation in the District before the delivery of such securities to the reinsuring company. (June 19, 1934, 48 Stat. 1134, ch. 672, § 18, ch. II.)

#### CROSS REFERENCE

Other provisions concerning reserves and capital, § 35-201 et seq.

§ 35-418 [5: 217q]. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

The superintendent may examine the books, papers, property, and the affairs of any insurance company organized or doing business in the District and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of an insurance company or of any company which holds the capital stock of an insurance company for the purpose of controlling the management thereof as voting trustees or otherwise. The superintendent, his deputy, or any examiner may examine under oath the officers and agents of such company and all persons deemed to have material information regarding the company's property or business. Every such company, its officers and agents, shall produce at the home office of the company at the time designated by the superintendent, its books of original entry and all records and papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book, record, or paper in his custody relevant to the examination, for the inspection of the superintendent, his deputy or examiners, whenever required; and the officers and agents of such company shall facilitate such examination and aid the examiners in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records, or documents of such company, or ascertained from the sworn testimony of its officers or agents or other persons examined under oath concerning its affairs, and said report so verified shall be presumptive evidence in any action or proceeding in the name of the District against the company, its officers or agents, of the facts therein stated. The superintendent shall grant a hearing to the company examined, or he shall furnish it a copy of his report, in tentative form, requesting that the statements and items therein contained be checked, and the report be returned to the superintendent within the time specified by him, before filing any such report and before making public such report or any matters relating thereto; and may withhold any such report from public in-



spection for such time as he may deem proper; and may, after so filing, if he deems it for the interest of the public to do so, publish any such report or the result of any such examination as contained therein in one or more newspapers in the District without expense to the company. It shall be the duty of the superintendent to examine every domestic insurance company at least once in three years.

The expense of every such examination, not to include salaries, shall be paid by the company examined, and such company shall pay to the superintendent, his deputies, and/or his examiners the actual expense of such examination upon itemized bills furnished by the superintendent. (June 19, 1934, 48 Stat. 1135, ch. 672, § 19, ch. II.)

#### CROSS REFERENCE

Other provisions for inspection and examination of insurance companies, §§ 35-108, 35-201, 35-202, 35-903, 35-1313.

§ 35-419 [5: 217r]. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

The superintendent may, the corporation counsel of the District representing him, apply to the District Court of the United States for the District of Columbia for a rule directing any company doing business in the District, any company organized under the laws of the District or other Acts of Congress, or any company in course of organization, to show cause why the superintendent should not take possession of its property and conduct its business and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require, whenever any such company (a) is insolvent; or (b) in the case of a stock company, has neglected or refused to observe a lawful order of the superintendent to make good within the time prescribed by law any deficiency of its capital or surplus, or in the case of a mutual company, if its assets have not become equal to its liabilities within ninety days from the date of notification thereof by the superintendent; or (c) has by contract or reinsurance, or otherwise transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business, in the property or business of any other company, association, society, or order, without having first obtained the written approval of the superintendent; or (d) is found, after an examination by the superintendent, his deputy or examiners, to be in such condition that its further transaction of business will be hazardous to its policyholders; or (e) has willfully violated its charter; or (f) is carrying on activities against public policy.

On such application, or any time thereafter, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith and shall either deny the application or direct the superintendent to take pos-

session of the property and conduct the business of such company, and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or of the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed and that the company can properly resume possession of its property and the conduct of its business.

If, on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted.

For the purpose of this section the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents of insurance as his agent or agents, and to employ clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The fair and reasonable compensation of such special deputy superintendents, clerks, and assistants and all expenses of taking possession of and conducting the business of liquidating any such company shall be recommended by the superintendent, subject to the approval of the court, and shall on certificate of the superintendent be paid out of the funds or assets of such company.

For the purpose of this section the superintendent shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

The superintendent shall transmit to the commissioners, in his annual report, the names of the companies so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders, and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such company shall file annually with the superintendent a report of the affairs of such company similar to that required by section 35-407. The court may require corporate surety bond from the superintendent or any assistant appointed by him, in such amount as it may deem necessary, the cost of which bond shall be paid as other expenses provided under this section. (June 19, 1934, 48 Stat. 1135, ch. 672, § 20, ch. II.)

#### CROSS REFERENCE

Rules and regulations generally, § 35-102 and notes.



**§ 35-420 [5: 217s]. When company to be deemed insolvent.**

Every insurance company whose assets and credits are not sufficient to reinsure its outstanding risks in a solvent insurance company, shall be deemed insolvent and may be proceeded against as an insolvent company. (June 19, 1934, 48 Stat. 1137, ch. 672, § 21, ch. II.)

**§ 35-421 [5: 217t]. Reinsurance by superintendent.**

The superintendent may reinsure all of the policy obligations of any domestic insurance company, of which he is a receiver, in any solvent company authorized to do business in the District, if the assets of the company are sufficient to effect such reinsurance. If such assets are insufficient for that purpose, the superintendent, upon like consent, may reinsure a percentage of each outstanding policy obligation of such company to the extent that its assets may be sufficient for that purpose. No contract of reinsurance shall be entered into by the superintendent, except in pursuance of an order of the court in which he was appointed receiver directing the reinsurance and establishing the general form of the contract for the same. (June 19, 1934, 48 Stat. 1137, ch. 672, § 22, ch. II.)

**§ 35-422 [5: 217u]. Valuation of assets—Rule—Discretion of superintendent.**

All bonds or other evidences of debt having a fixed term and rate held by any company authorized to do business in the District, if amply secured and if not in default as to principal or interest, shall be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made: *Provided*, That the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase: *Provided further*, That the superintendent shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding: *And provided further*, That any such company may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. (June 19, 1934, 48 Stat. 1137, ch. 672, § 23, ch. II.)

**CROSS REFERENCE**

Investments permitted, §§ 35-416, 35-535, 35-536.

**§ 35-423 [5: 217v]. Appointment of superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.**

Every domestic company not having its home office in the District and every foreign or alien company now or hereafter transacting business in the District, and every foreign or alien company now or hereafter soliciting, selling, or writing insurance on any resident of the District, through the medium of the United States mails, shall file with the super-

intendent a duly executed instrument appointing and constituting him and his successors the true and lawful attorney of such company upon whom all lawful process in any action or legal proceeding against it may be served and therein shall agree that any lawful process against it which may be served upon its said attorney, as herein provided, shall be of the same force and validity as if served upon the company and the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the principal. The superintendent shall forthwith forward such process by mail to the company, or, in the case of an alien company, to the resident manager or last appointed general agent of the company in the United States. The deposit, by the superintendent or his deputy, of such process sent by registered mail in a sealed envelope, postage prepaid, in the United States mail and service of such process, shall not be effectual until the same has been so mailed and received by the company and registered receipt shall be prima facie evidence of the notice of service to a company, or to the resident manager in the case of an alien company.

Failure of any such company to file such instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such insurance company transacting business or soliciting, selling, or writing insurance on any resident of the District without designating an attorney for service of process, incident to adjustment of claims and kindred matters, shall, upon complaint filed by the superintendent in the District Court of the United States for the District of Columbia, be fined, upon conviction of violating any provision of this section, not to exceed \$200 a day for such violation. (June 19, 1934, 48 Stat. 1137, ch. 672, § 24, ch. II.)

**§ 35-424 [5: 217w]. Political contributions prohibited—Penalty—Immunity of witnesses.**

No company doing business in the District shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or property for or in aid of any political party, committee, or organization, or for or in aid of any corporation, joint-stock, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney, or agent of any company which violates any of the provisions of this section, who participates in, aids, abets, or advises, or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section shall be guilty of a misdemeanor and be punished by imprisonment for not



more than one year and a fine of not more than \$1,000, and any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company for the amount so contributed.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this section, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1138, ch. 672, § 25, ch. II.)

§ 35-425 [5: 217x]. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

No person shall act within the District for any life-insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance unless he has complied with the provisions of this section and has secured a license from the superintendent of insurance. Each applicant for such license shall file with the superintendent of insurance his written application therefor on blanks furnished by the superintendent, which application shall be signed and sworn to by the applicant and shall give his name, age, residence, place of business, and occupation for five years next prior to the date of application and also set forth his qualifications for such license, namely, his familiarity with the life-insurance laws of the District and with the provisions of the contracts to be negotiated; what insurance experience he has had, if any; what insurance instruction he has had or expects to receive; whether he has been refused or has had suspended or revoked a license to solicit insurance by the insurance department or supervising officials of the District of Columbia or of any State; whether any insurance company or any general agent claims such applicant is indebted under any agency contract or otherwise, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto, if any; whether he has had an agency contract canceled, and if so, when, by what company, or general agent and the reason for such action, and such other information as the superintendent may require. The applicant shall be vouched for by an official or a licensed representative of the company for which he proposes to act, who shall certify whether the applicant is personally known to him, whether the applicant has been appointed a general

agent, agent, or solicitor to represent such company, and that such company has duly investigated the character and record of such person, and has satisfied itself that he is trustworthy and qualified to act as its general agent, agent, or solicitor and intends to hold himself out in good faith as a life insurance general agent, agent, or solicitor. If, upon the showing made, the superintendent of insurance is reasonably satisfied that the applicant is a trustworthy person he shall promptly issue the license applied for. A general agent, agent, or solicitor licensed to represent any life insurance company doing business in the District shall be entitled to place excess or rejected risks in any other company lawfully doing business in the District, with the knowledge and approval of his own company without additional or separate license. Every license issued under this section shall expire annually on the 30th day of April next after its issue unless prior thereto it is revoked or suspended by the Superintendent of Insurance or the authority of the general agent, agent, or solicitor to act for the company is terminated.

In the absence of a contrary ruling by the superintendent in a given case, license renewals shall be issued from year to year upon the request of the company without further action on the part of the general agent, agent, or solicitor.

No officer or traveling salaried employee of any insurance company not compensated on a commission basis shall be required to obtain a license under this section.

Every life insurance company shall, upon the termination of the employment of any general agent, agent, or solicitor, file with the Superintendent of Insurance a statement of the facts relative to the termination of such employment and the cause thereof. Any information, document, record, statement, or thing required to be made or disclosed to the Superintendent of Insurance by this section, shall be privileged and shall not be used as evidence in any action or proceeding instituted against the company or any representative thereof by or in behalf of any person who has been licensed under the provisions of this section. (June 19, 1934, 48 Stat. 1139, ch. 672, § 26, ch. II.)

#### CROSS REFERENCES

Brokers, § 35-428.

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

License fees, § 35-402.

Other insurance agents, §§ 35-1201, 35-1202.

§ 35-426 [5: 217y]. Suspension or revocation of license—Grounds for—Notice of—Hearing—Penalty.

The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker if, after due investigation, notice and a hearing, either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that such license has been secured by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any mis-



leading representations and/or incomplete and/or fraudulent comparison of any policies or companies or concerning any companies to any person for the purpose or with the intention of inducing such person to lapse, forfeit, surrender, or exchange his insurance then in force; or has made any misleading estimate of the dividends or share of surplus to be received on a policy; or has failed or refused to pay or to deliver to the company or to his principal any money or other property in the hands of said general agent, agent, solicitor, or broker belonging to such company or principal when requested so to do; or has violated any lawful ruling of the insurance department; or has been convicted of a felony; or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor, or broker. Before the Superintendent of Insurance shall revoke or suspend any such license he shall give to the general agent, agent, solicitor, or broker and to the company which or whom he represents written notice of the charges and of the hearing, not less than twenty days prior to the time set for such hearing. Such notice shall be forwarded by registered mail addressed to the general agent, agent, solicitor, or broker at his last-known address, and to the company at its principal place of business. Full opportunity shall be given at such hearing to the general agent, agent, solicitor, or broker and to the company or principal to appear with counsel and be heard upon such charges. Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker, or applicant aggrieved may appeal, from the ruling of the Superintendent of Insurance to the court of competent jurisdiction designated in section 35-427. Appeals may be taken from the judgment of said court as prescribed in section 35-427.

No individual whose license as a general agent, agent, solicitor, or broker is revoked shall be entitled to any license under chapters 3-8 of this title for a period of one year after revocation.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation. (June 19, 1934, 48 Stat. 1140, ch. 672, § 27, ch. II.)

#### CROSS REFERENCES

Misrepresentations forbidden, § 35-714.

Revocation and suspension of licenses, see notes to § 35-102.

Suspension or revocation of license for violation of Uniform Narcotic Drug Act, § 33-418.

§ 35-427 [5: 217z]. Appeal from rulings of superintendent—Procedure—Costs and supersedeas bond—Liability of superintendent.

Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker or applicant aggrieved may appeal from the ruling of the superintendent to the District Court of the United States for the District of Columbia, in equity, wherein, upon the relation of the superintendent, by representation of the corporation counsel, the superintendent shall be designated as defendant and the general agent, agent, solicitor, or broker or appli-

cant as plaintiff, and the said cause shall be docketed in said court and tried as an equity case. Appeals may be taken from the judgment of said District Court of the United States for the District of Columbia to the United States Court of Appeals for the District of Columbia as in other equity cases.

In all said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (June 19, 1934, 48 Stat. 1140, ch. 672, § 28, ch. II.)

#### COMPILER'S NOTE

The Rules of Civil Procedure for the District Courts adopted by the Supreme Court of the United States abolish the distinction between law and equity and provide that there shall be one form of action known as a "civil action."

§ 35-428 [5: 217aa]. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

Every person desiring to engage in business in the District as a life insurance broker shall apply to the superintendent for a license so to do and in the manner hereinafter prescribed.

The applicant for such license shall file with the superintendent his written application therefor and shall make a sworn statement on blanks to be prepared by the superintendent giving his name, age, residence, place of business, occupation for five years just prior to the date of making his application; and shall state that he intends to hold himself out in good faith as carrying on the business of broker of life insurance, and shall also set out his qualifications, namely, his familiarity with the life insurance laws of the District and with the provisions of the policy contracts to be negotiated; what insurance experience and instruction he has had; his intention with reference to engaging regularly if not exclusively in the business of life insurance broker; whether he has been refused or has had suspended or revoked a license as a broker, general agent, agent, or solicitor of life insurance by the insurance department or the supervising officials of any state; whether any company claims that he is indebted to it under any agency contract or otherwise; if so, what company, the nature of the claim and of his defense if any, whether he has had any agency contract canceled by any company, and if so, when, by what company, and the reason for such action, and such other information as the superintendent may require.

The applicant shall be vouched for by at least three reputable citizens of the District setting out whether the applicant is personally known to them, what they know of the reputation of the applicant as a man of business integrity, and what they know



of the applicant's general fitness to act as a broker of life insurance.

The superintendent may require such applicant for license or renewal thereof to submit to examination as to his fitness or qualifications for the license or licenses applied for. Such examination may be made by the superintendent or by his deputy, which said examination may be waived by the superintendent, upon satisfactory proof of the qualifications of the applicant.

When the superintendent is satisfied from the application or the examination made by him that the applicant is qualified, he shall issue to said applicant a license to engage in the business specified in said applications which shall also be specified in said license.

No individual whose license as a broker is revoked shall be entitled to any license under chapters 3-8 of this title for a period of one year after such revocation, provided, however, that the failure or refusal of the superintendent to license any such applicant shall be subject to review in the same manner as provided in section 35-427.

Licenses shall be renewed annually and every such license shall continue in force until the 30th day of April next following unless in the meantime suspended or revoked; provided any qualified person may be licensed as a broker regardless of place of residence or domicile.

Any person who violates any provision of this section upon conviction shall be fined not exceeding \$100 for each and every violation. (June 19, 1934, 48 Stat. 1141, ch. 672, § 29, ch. II.)

#### CROSS REFERENCES

Insurance agents other than life, §§ 35-1201, 35-1202.  
License fees, § 35-402.  
Life insurance agents, § 35-425 et seq.  
Revocation or suspension of licenses, § 35-426 and notes.

**§ 35-429 [5: 217bb]. Premiums paid to agent—Agent trustee—Embezzlement—Penalty.**

An insurance agent, solicitor, or broker who acts in negotiating or renewing or continuing a contract of insurance for a company lawfully doing business in the District, and who receives any money or substitute for money as a premium for such a contract from the insured, whether he shall be entitled to an interest in same or otherwise, shall be deemed to hold such premium in trust for the company making the contract. If he fails to pay the same over to the company after written demand made upon him therefor, such failure shall be prima facie evidence that he has used or applied the said premium for a purpose other than paying the same over to the company, and upon conviction thereof he shall be deemed guilty of embezzlement and punished accordingly. (June 19, 1934, 48 Stat. 1142, ch. 672, § 30, ch. II.)

#### CROSS REFERENCE

Embezzlement, § 22-1201 et seq.

**§ 35-430 [5: 217cc]. Contract of minors for life, health, and accident insurance—Beneficiaries—Surrender and discharge.**

Any minor of the age of fifteen years or more may, notwithstanding such minority, contract for life,

health, and accident insurance on his own life for his or her own benefit or for the benefit of his father, mother, husband, wife, child, brother, sister, or for the benefit of any person who has the care or custody of said minor or with whom said minor makes his or her home, and may exercise all such contractual rights with respect to any such contract of insurance as might be exercised by a person of full legal age and may at any time surrender his or her interest in any such insurance or give a valid discharge for any benefit accruing or money payable thereunder. (June 19, 1934, 48 Stat. 1142, ch. 672, § 31, ch. II.)

**§ 35-431 [5: 217dd]. Assessment companies shall not be formed, admitted, or licensed.**

Any company which makes insurance or reinsurance the performance of which is not guaranteed by the reserves required by chapters 3-8 of this title, but is mainly contingent upon the payment of assessments or calls made upon its members, shall not be formed, admitted, or licensed in the District. (June 19, 1934, 48 Stat. 1142, ch. 672, § 32, ch. II.)

**§ 35-432 [5: 217ee]. Appeal from superintendent to Commissioners.**

Any appeals to the commissioners from rulings of the superintendent shall be perfected and filed with the commissioners within twenty days exclusive of Sundays and legal holidays from the date such rulings are communicated to the party at interest. (June 19, 1934, 48 Stat. 1142, ch. 672, § 33, ch. II.)

### Chapter 5.—DOMESTIC LIFE COMPANIES

#### Sec.

- 35-501. Articles of incorporation.
- 35-502. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.
- 35-503. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as "company in course of organization"—Authority to organize—No policies to be issued—Certificate of authority.
- 35-504. Authority to solicit subscriptions to capital of company in course of organization.
- 35-505. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.
- 35-506. Examination of company in course of organization—Revocation of permit, authority of agent—Causes—Notice.
- 35-507. When corporate powers of company in course of organization shall cease.
- 35-508. Capital-stock requirements.
- 35-509. Amendment of articles of incorporation—Procedure.
- 35-510. Increase of capital stock—Effect of failure to subscribe and pay in within one year.
- 35-511. Decrease of capital stock—Conditions—Reissuance of stock certificates.
- 35-512. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.
- 35-513. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.
- 35-514. Capital stock transfers—Effect of record ownership.
- 35-515. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.
- 35-516. Corporations and associations as members of mutual companies—Liability.



- Sec.  
 35-517. Mutual companies—Requirements before doing business.  
 35-518. Reincorporation of existing corporations.  
 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.  
 35-520. Application of act to corporations formed prior to June 19, 1934.  
 35-521. Directors — Election — Qualifications—Limitation on proxies.  
 35-522. Bylaws.  
 35-523. Election of directors.  
 35-524. Cumulative voting.  
 35-525. Voting power under policies of group life insurance.  
 35-526. Liability of directors—Objections to be filed.  
 35-527. Salaries to be authorized by directors.  
 35-528. Limitation of dividends to stockholders and policyholders.  
 35-529. Officers.  
 35-530. Officers and directors not to be pecuniarily interested in transactions—Appraisal—Loans on policies.  
 35-531. "Voting-trust agreements" defined and declared unlawful.  
 35-532. Maximum and contingent premiums of mutual companies.  
 35-533. Classification of risks, payment of dividends, and creation of surplus by mutual companies.  
 35-534. Mutual company guaranty fund—Mutual company's power to borrow—Approval by Superintendent.  
 35-535. Investment of funds of domestic companies—Underwriting securities—Agreements to withhold securities or property from sale.  
 35-536. Domestic company real-estate holdings—Manner—Disposal.  
 35-537. Reinsurance by domestic companies in authorized companies.  
 35-538. Vouchers for disbursements.  
 35-539. Books, records, accounts, and vouchers of domestic companies.  
 35-540. Unlawful acquisition by company of its own capital stock.

#### § 35-501 [5:218]. Articles of incorporation.

Any seven or more persons who desire to become incorporated as an insurance company shall make, sign, and acknowledge articles of incorporation before an officer authorized to take acknowledgment of deeds, in which shall be stated:

(a) The proposed corporate name, which shall not be identical with nor so nearly resemble the name of an existing corporation organized under the laws of the District, or authorized to transact business therein, as to mislead the public or cause confusion and, in case of a mutual company, shall contain the word "mutual."

(b) The term of its existence, which may be perpetual.

(c) The place where its principal office shall be located, which shall be the District of Columbia.

(d) The purpose of the company, which shall be restricted to the business of insurance appertaining to persons.

(e) The mode and manner in which the corporate power shall be exercised; the number, terms of office, and manner of electing directors, who shall be stockholders, or, in the case of a mutual company, shall be members or policyholders of the corporation.

(f) The provisions for meeting and votes of stockholders and policyholders. A stock company in which the policyholders do not vote shall provide

for cumulative voting in its articles of incorporation. A stock company in which policyholders vote shall provide that each stockholder shall have one vote, in person or by proxy, for each share of stock owned. A company without capital stock shall provide that every policyholder shall be a member and entitled to one or more votes, in person, or by proxy, based on the insurance in force, the number of policies held or the amount of premiums paid as may be provided in the by-laws, and a stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital stock, if any, the number of shares, and the par value of each share.

(h) The number of directors who shall manage the company for the first year and their names.

(i) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company. (June 19, 1934, 48 Stat. 1143, ch. 672, § 1, ch. III.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8), are hereby repealed."

Section 5, chapter VI, of this act provides as follows: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCES

Amendment of articles, § 35-509.  
 Application to existing companies, § 35-520.  
 Assessment companies forbidden, § 35-431.  
 Conversion of stock into mutual companies, § 35-519.  
 Health and accident companies, § 35-202.  
 Increase or decrease of capital stock, §§ 35-510, 35-511.  
 Liability of stockholders, § 35-512.  
 Mutual companies, § 35-532 et seq.  
 Quo warrant proceedings to question right to corporate rights and franchises, § 16-1601 et seq.  
 Reincorporation of existing companies, § 35-518.

#### STATUTORY REFERENCE

Sales of securities, U. S. C., title 15, ch. 2a.

#### § 35-502 [5:218a]. Filing articles of incorporation—Notice of intention to form company—Bond of incorporators.

The incorporators shall file such articles with the superintendent and shall publish in a newspaper of general circulation in the District notice of the filing of such articles and of the intention to form such company. Copy of such notice verified by the oath of the publisher of the newspaper, or his agent, copies of proposed bylaws and forms of subscription for capital stock and of proposed applications for membership and for insurance and of all proposed forms of insurance policies, literature, and advertisements shall be filed with the superintendent. The incorporators shall also file with the superintendent a bond payable to the superintendent and his successors, as trustee, in the sum of \$10,000 with approved corporate sureties, and conditioned upon the faithful accounting to the proposed company, on completion of its organization and the receipt of its certificate of authority from the superintendent, or the stockholders, members, applicants for policies, and creditors, or the trustee, receiver, or assignee of the proposed company, duly appointed in any pro-



ceedings in any court or department of competent jurisdiction in the District, in accordance with their respective rights in case the organization of the proposed company shall not be completed and a certificate of authority shall not be procured from the superintendent. (June 19, 1934, 48 Stat. 1144, ch. 672, § 2, ch. III.)

§ 35-503 [5: 218b]. Articles of incorporation—Submission to corporation counsel—Recording—Corporate powers—Permit as “company in course of organization”—Authority to organize—No policies to be issued—Certificate of authority.

The superintendent shall submit the proposed articles and other papers so filed with him to the corporation counsel of the District, who shall examine the same, and, if he finds the same in accordance with law, he shall so certify and return the same to the superintendent, who shall cause the articles and the certificate of the corporation counsel to be recorded in the records of the superintendent and issue to the incorporators two certified copies thereof, one of which shall be recorded in the office of the recorder of deeds for the District of Columbia, and thereupon such incorporators and their associates shall become and be a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions of chapters 3-8 of this title, as shall be needful to accomplish the purposes of its organization. If the superintendent shall approve the sureties on the bond so filed, or on any like bond substituted therefor, he shall issue to the corporation a permit, as a “company in course of organization,” authorizing it to complete its organization. Said company in course of organization shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations in chapters 3-8 of this title prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the superintendent to transact the business of insurance appertaining to persons. But such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the superintendent authorizing it so to do.

Upon completion of organization in accordance with chapters 3-8 of this title the superintendent shall issue to such company, in course of organization, a certificate of authority as an insurance company. (June 19, 1934, 48 Stat. 1144, ch. 672, § 3, ch. III.)

§ 35-504 [5: 218c]. Authority to solicit subscriptions to capital of company in course of organization.

No person shall solicit subscriptions for the capital stock of or applications for insurance in any such company in course of organization unless he has been duly authorized by the company and a certificate of his authority, duly signed by a principal officer of the company, has been filed with and approved by the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, § 4, ch. III.)

§ 35-505 [5: 218d]. Subscription to capital stock—Limitation of expense on sale of capital stock—Disposition of proceeds.

Every subscription to the capital stock of a stock company shall contain the stipulation that no sum shall be used for commission, promotion, or organization expenses in excess of a percentage of the amount paid upon the stock subscriptions, to be named in such stipulation and approved by the superintendent, and the remainder of sums so paid to the company shall be invested in securities in which a life insurance company is authorized to invest, or deposited in a bank or trust company in the District until the company has duly procured a certificate of authority from the superintendent. (June 19, 1934, 48 Stat. 1145, ch. 672, § 5, ch. III.)

§ 35-506 [5: 218e]. Examination of company in course of organization—Revocation of permit, authority of agent—Causes—Notice.

The superintendent shall personally, or through his deputy and assistants, examine into the affairs of any such company in course of organization and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with or who has knowledge of the affairs of such company, and if he find the company is violating the law, or if the company shall not be qualified for a certificate of authority within two years from date of its permit, he shall revoke its permit; and if he find an agent of such company has violated the law, he shall revoke his authority, and he may for such agent's violation revoke the company's permit. Any revocation shall be after twenty days' notice. The superintendent may, on proper showing, reinstate any company's permit or agent's authority which he has revoked. (June 19, 1934, 48 Stat. 1145, ch. 672, § 6, ch. III.)

#### CROSS REFERENCE

Revocation or suspension of certificates and licenses, see notes to § 35-102.

§ 35-507 [5: 218f]. When corporate powers of company in course of organization shall cease.

If any domestic life insurance company, in course of organization, shall not commence to issue policies within two years from the date of filing its articles of incorporation in the office of the superintendent, its powers shall thereby cease, and the court, upon petition of the superintendent or of any person interested, may fix by decree the time in which the superintendent may settle and close its affairs: *Provided, however*, That the superintendent may extend the time for any such company to commence the issuance of policies for a period not exceeding two years if the said company shall show good cause in writing why the same should be done. (June 19, 1934, 48 Stat. 1145, ch. 672, § 7, ch. III.)

§ 35-508 [5: 218g]. Capital-stock requirements.

A domestic capital-stock company organized under chapters 3-8 of this title shall have a paid-up capital stock of not less than \$100,000. Each domestic capital-stock company organized under chapters 3-8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per



centum of such capital stock. (June 19, 1934, 48 Stat. 1145, ch. 672, § 8, ch. III.)

**§ 35-509 [5: 218h]. Amendment of articles of incorporation—Procedure.**

Any company may amend its articles of incorporation upon publishing notice of such intention, authorized by a majority of its directors, once a week for three consecutive weeks in a newspaper of general circulation in the District, and with the written consent of two-thirds of its stockholders, or two-thirds of its members present in person or by proxy at a meeting called for that purpose if it does not have capital stock, and by observing such other and further requirements in that behalf as may be prescribed in its articles of incorporation. Such amendment shall be signed and acknowledged by the president and secretary or like officers of the company, and, with a copy of the proceedings of the stockholders or members, if any, and of the directors, shall be filed with the superintendent and by him submitted to the corporation counsel, and if he finds the amendment and proceedings in conformity with the law, he shall so certify to the superintendent. The amendment shall not take effect until the superintendent shall deliver to the company his certified copy of the amendment and of the certificate of the corporation counsel. (June 19, 1934, 48 Stat. 1145, ch. 672, § 9, ch. III.)

**§ 35-510 [5: 218i]. Increase of capital stock—Effect of failure to subscribe and pay in within 1 year.**

If a company amend its articles of incorporation by providing for an increase of its capital stock, such increase shall be subscribed and fully paid up within one year of the date of such amendment, unless the superintendent shall certify his consent to an extension of such time. Failure to have such increase of capital stock paid up within the time provided may be considered grounds for ousting the company from its powers under any such amendment to such articles of incorporation by a court of competent jurisdiction in a proceeding by the superintendent, the corporation counsel representing him, against the company for such judgment. (June 19, 1934, 48 Stat. 1146, ch. 672, § 10, ch. III.)

**§ 35-511 [5: 218j]. Decrease of capital stock—Conditions—Reissuance of stock certificates.**

A company may, with the approval of the superintendent, amend its articles of incorporation by providing for a decrease of its capital stock and a corresponding increase in surplus to an amount not less than the minimum capital stock and surplus required by chapters 3-8 of this title. The superintendent shall not approve or issue his certified copy of such amendment if he be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to stockholders upon any such decrease of capital stock which shall reduce the surplus and capital stock to less than the minimum capital stock and surplus required as aforesaid. Upon any such amendment so decreasing the capital stock such company may require each stockholder to return his certificate of stock and accept a new

certificate for such proportion of the amount of its original capital stock as the reduced capital stock shall bear to the original capital stock. (June 19, 1934, 48 Stat. 1146, ch. 672, § 11, ch. III.)

**CROSS REFERENCE**

Decrease, except as herein authorized, unlawful, § 35-540.

**§ 35-512 [5: 218k]. Liability of stockholders—Fiduciaries as stockholders—Pledged stock.**

All the stockholders of every company incorporated under this chapter shall be severally and individually liable to the policyholders and creditors of the company in which they are stockholders for the unpaid amount due upon the shares of capital stock held by them, respectively, for all debts and contracts made by such company until the whole amount of capital stock fixed and limited by such company shall have been paid in.

No person holding capital stock in such company as executor, administrator, guardian, committee, or trustee shall be personally subject to any liability as stockholder of such company, but the estate and funds in the hands of such executor, administrator, guardian, committee, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust would have been if he had been living and competent to act and hold the stock in his own name.

Every such executor, administrator, guardian, committee, or trustee shall represent the capital stock in his hands at all meetings of the company, and may vote accordingly as a stockholder.

No person holding capital stock in such company as collateral security shall be personally subject to any liability as stockholder of such company, but the person pledging such capital stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and every person who shall pledge his capital stock as collateral security may, nevertheless, represent the same at all meetings and vote as a stockholder. (June 19, 1934, 48 Stat. 1146, ch. 672, § 12, ch. III.)

**§ 35-513 [5: 218l]. Capital stock must be paid in before doing business—Capital stock payment calls—Forfeiture—Notice.**

No company incorporated under this chapter shall be authorized to transact any business until the authorized capital stock shall have been actually paid in, either in cash or in investments authorized by chapters 3-8 of this title at market value; and it shall be lawful for the directors to call in and demand from the stockholders the residue of their subscriptions in money or property at such times and in such instalments as the directors shall deem proper, under the penalty of forfeiting the shares of capital stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholder within sixty days after a personal demand or a notice requiring such payment shall have been published once a week for three consecutive weeks in a daily newspaper in the District. (June 19, 1934, 48 Stat. 1147, ch. 672, § 13, ch. III.)



**§ 35-514 [5: 218m]. Capital stock transfers—Effect of record ownership.**

The capital stock of such company shall be deemed personal estate and shall be transferable in such manner as shall be prescribed by the bylaws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in or the shares shall have been declared forfeited for nonpayment.

A person in whose name shares of capital stock stand on the books of a company shall be deemed the owner thereof as regards the company, but if any such person shall in good faith sell or otherwise dispose of any of his shares of capital stock to another and deliver to him the certificates for such shares, with written authority for the transfer of the same on the books, the title of the former shall vest in the latter so far as may be necessary to effect the purpose of the sale or other disposition, not only as between the parties themselves but also as against the creditors of and subsequent purchasers from the former. (June 19, 1934, 48 Stat. 1147, ch. 672, § 14, ch. III.)

**§ 35-515 [5: 218n]. Capital stock book—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.**

It shall be the duty of the directors of every company formed under this chapter to cause a book to be kept by the treasurer or secretary thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such company, and showing their place of residence, the number of shares of capital stock held by them, respectively, the time when they became owners of such shares, and the amount of capital stock actually paid in.

Such book shall, during the usual business hours of the day, on every business day, be open for inspection by policyholders, stockholders, and creditors of the company and their personal representatives at the office or principal place of business of such company in the place where its business operations shall be located, and any policyholder, stockholder, creditor, or representative shall have a right to make extracts from such book.

Such book shall be presumptive evidence of the facts therein stated in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders.

Every officer or agent of any company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, as herein provided, shall be deemed guilty of a misdemeanor, and the company shall pay to the party injured a penalty of \$50 for any such neglect or refusal, and all damages resulting therefrom.

Every company that shall neglect to keep such book open for inspection, as herein provided, shall forfeit to the District the sum of \$50 for every day it shall so neglect, to be sued for and recovered by the superintendent, the corporation counsel representing him, in the District Court of the United States for the District of Columbia. (June 19, 1934, 48 Stat. 1147, ch. 672, § 15, ch. III.)

**§ 35-516 [5: 218o]. Corporations and associations as members of mutual companies—Liability.**

Public or private corporations, boards, or associations of the District or elsewhere, may make applications, enter into agreements for, hold policies in, and become members of mutual companies. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or of an estate may be recognized as acting for or on its behalf, but shall not be personally liable by reason of acting in such representative capacity. (June 19, 1934, 48 Stat. 1148, ch. 672, § 16, ch. III.)

**§ 35-517 [5: 218p]. Mutual companies—Requirements before doing business.**

No domestic mutual company shall transact any business until at least two hundred persons shall have subscribed in the aggregate for at least \$200,000 of insurance and shall have paid in full one annual premium in money upon the insurance so subscribed. (June 19, 1934, 48 Stat. 1148, ch. 672, § 17, ch. III.)

**CROSS REFERENCE**

Assessment companies forbidden, § 35-431.

**§ 35-518 [5: 218q]. Reincorporation of existing corporations.**

Any domestic insurance corporation existing or doing business on June 19, 1934, may, by a vote of a majority of its directors or trustees, accept the provisions of chapters 3-8 of this title and amend its charter to conform with the same upon obtaining the consent of the superintendent thereto in writing, and filing such consent in the office of the recorder of deeds for the District; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any and all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated hereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter and filing the same with the superintendent and the record thereof with the recorder of deeds of the District, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the period and the same general proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the superintendent, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter or certificate be approved by the superintendent and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers



and be subject to the same liabilities as if such charter or certificate so amended had been its original charter or certificate of incorporation, but without prejudice to pending action or proceeding or any rights previously accrued.

Upon the reincorporation or upon the amendment of the charter of any corporation having a capital stock in accordance with the provisions of this section it may by a vote of the majority of its directors confer upon its policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1148, ch. 672, § 18, ch. III.)

**§ 35-519 [5: 218r]. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.**

Any domestic stock company organized or licensed to do business, whether incorporated under chapters 3-8 of this title, or any previous existing law, or Act of Congress, may become a mutual company, and to that end may carry out a plan for the acquisition of shares of its capital stock: *Provided, however*, That such plan (1) shall have been adopted by a vote of a majority of the directors of such company; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose; and (3) shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose, of policyholders each insured for at least \$1,000 and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting, in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan: *Provided, however*, That policyholders may vote in person, by proxy, or by mail; that all votes shall be cast by ballot and the superintendent shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the superintendent and to the company the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the superintendent; that all necessary expenses incurred by the superintendent shall be paid by the company as certified to by him; and (4) shall have been submitted to the superintendent and shall have been approved by him in writing: *Provided*, That every payment for the acquisition of any shares of the capital stock of such company, the purchase price of which is not fixed by such plan, shall be subject to the approval of the superintendent: *Provided further*, That neither such plan,

nor any such payment, shall be approved by the superintendent unless at the time of such approvals, respectively, the company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets not less than the entire liabilities of the company, including the net values of its outstanding contracts computed according to the standard adopted by the company under section 35-701, and also all funds, contingent reserves, and surplus save so much of the latter as shall have been appropriated or paid under such plan. (June 19, 1934, 48 Stat. 1149, ch. 672, § 19, ch. III.)

**CROSS REFERENCE**

Rules and regulations generally, § 35-102 and notes.

**§ 35-520 [5: 218s]. Application of act to corporations formed prior to June 19, 1934.**

Every company incorporated under the provisions of the laws of the District, or Act of Congress, prior to June 19, 1934, is hereby brought under all the provisions of chapters 3-8 of this title, except that its capital may continue in the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such charter not authorized by this law. (June 19, 1934, 48 Stat. 1149, ch. 672, § 20, ch. III.)

**§ 35-521 [5: 218t]. Directors—Election—Qualifications—Limitation on proxies.**

The stock, property, and business of every company organized under chapters 3-8 of this title shall be managed by the directors who shall, except for the first year, be annually elected, at such time and place as shall be determined by the bylaws of the company. Every director of such a stock company shall be a stockholder thereof, and every director of such a mutual company shall be a policyholder thereof. All proxies used in the election of directors of such companies shall be valid for a period not exceeding one year from the election for which they were signed and in which they were authorized to be voted. (June 19, 1934, 48 Stat. 1149, ch. 672, § 21, ch. III.)

**CROSS REFERENCE**

Quo warranto proceedings to question right to corporate office, § 16-1601 et seq.

**§ 35-522 [5: 218u]. Bylaws.**

The directors of companies organized under chapters 3-8 of this title shall have power to make such by-laws as they deem proper for the management of the business affairs of such company, not inconsistent with the laws of the District and the Constitution of the United States, and prescribing the duties of officers, employees, and servants, that may be employed, for the appointment or election of all officers, and for carrying on all kinds of business within the objects and purposes of such company. (June 19, 1934, 48 Stat. 1150, ch. 672, § 22, ch. III.)



**§ 35-523 [5: 218v]. Election of directors.**

Notice of the time and place of holding election of directors of a company organized under chapters 3-8 of this title shall be sent to those entitled to vote, and the election shall be made by such of the stockholders and/or policyholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and the persons receiving the greatest number of votes shall be directors. When any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as shall be prescribed by the by-laws of the company.

In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said company when it ought to have been made, the company shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for directors in such manner as may be provided in the by-laws, and all acts of directors shall be valid and binding as against said company until their successors shall be elected. (June 19, 1934, 48 Stat. 1150, ch. 672, § 23, ch. III.)

**§ 35-524 [5: 218w]. Cumulative voting.**

In an election for directors of any stock company in which the policyholders do not vote, each stockholder having a right to vote may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer, that is to say: If the stockholder having a right to vote owns one share of stock, or has one vote, or is entitled to one vote for each of seven directors by virtue thereof, he may give one vote to each of said seven directors, or seven votes for any one thereof, or a less number of votes for any less number of directors, whatever may be the actual number to be elected, and in this manner may distribute or cumulate his votes as he may see fit. (June 19, 1934, 48 Stat. 1150, ch. 672, § 24, ch. III.)

**§ 35-525 [5: 218x]. Voting power under policies of group life insurance.**

In every group policy issued by a domestic life company the employer shall be deemed to be the policyholder for all purposes, within the meaning of this chapter, and, if entitled to vote at meetings of the company, shall be entitled to one vote thereat. (June 19, 1934, 48 Stat. 1150, ch. 672, § 25, ch. III.)

**§ 35-526 [5: 218y]. Liability of directors—Objections to be filed.**

The directors of any company organized under the laws of the District shall be personally liable when they have participated in or assented to any act which shall cause injury to policyholders, creditors, or stockholders resulting from (a) ultra vires acts; (b) illegal corporate acts done with their connivance, knowledge, or consent; (c) issuing unpaid or part-paid stock and marking or representing it as paid up in full; (d) dividend payments declared whether negligently or purposely impairing the capital stock and minimum surplus; (e) mismanagement; (f) loaning corporate funds to stockholders or discounting their notes out of corporate moneys; (g) making false notices or reports that deceive the public; or,

(h) transferring property to officers or stockholders to defraud policyholders or creditors. If any of the directors shall object to declaring a dividend or the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the secretary of the company and with the superintendent, they shall be exempt from the liability prescribed in this section for dividends declared or paid impairing the capital stock and minimum surplus. (June 19, 1934, 48 Stat. 1150, ch. 672, § 26, ch. III.)

**§ 35-527 [5: 218z]. Salaries to be authorized by directors.**

No domestic company shall pay any salary, compensation, or emolument to any officer, trustee, or director thereof, amounting in any one year to more than \$5,000, unless such payment shall be authorized by the board of directors of the company. (June 19, 1934, 48 Stat. 1151, ch. 672, § 27, ch. III.)

**§ 35-528 [5: 218aa]. Limitation of dividends to stockholders and policyholders.**

No domestic company shall make any payments in form of dividends or otherwise to its stockholders for or on account of any interest in or relation to the company as stockholders unless it possesses assets in the amount of such payment in excess of its liabilities, including its capital stock, and the surplus required by chapters 3-8 of this title; and no domestic company shall make any payments to its policyholders for or on account of any interest in or relation to the company as members or policyholders except for matured claims or other policy obligations and in the purchase of surrender values unless it possesses assets in the amount of such payments in excess of its liabilities, and the capital stock and surplus required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1151, ch. 672, § 28, ch. III.)

**§ 35-529 [5: 218bb]. Officers.**

There shall be a president, a secretary, and a treasurer of the company, who shall be elected by the directors; and also such subordinate officers as may be elected or appointed, and who may be required to give security for the faithful performance of the duties of their office, as chapters 3-8 of this title and the company by its by-laws may require. (June 19, 1934, 48 Stat. 1151, ch. 672, § 29, ch. III.)

**CROSS REFERENCE**

Quo warranto proceedings to question right to corporate office, § 16-1601 et seq.

**§ 35-530 [5: 218cc]. Officers and directors not to be pecuniarily interested in transactions—Appraisal—Loans on policies.**

No director or officer of any company doing business in the District shall receive any money or valuable thing for negotiating, procuring, recommending, or aiding in any purchase by or sale to such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale, or loan, nor shall the financial obligation of any such director or officer be guaranteed by such company in any capacity: *Provided*,



That nothing herein contained shall prevent any such director or officer from receiving a fee for appraising property for said company or for serving on any committee that passes on the investments of said company: *Provided further*, That nothing herein contained shall prevent a life insurance company from making a loan upon a policy held therein by a director not in excess of the net value thereof. Any person violating any provision of this section shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1151, ch. 672, § 30, ch. III.)

§ 35-531 [5: 218dd]. "Voting-trust agreements" defined and declared unlawful.

It shall be unlawful for any stockholder, director, or officer of any company having capital stock to enter into any contract or agreement, commonly known as "voting-trust agreements," whereby the rights, benefits, or liabilities attaching to the capital stock are transferred or assigned, temporarily or otherwise, to any person or group of persons, incorporated or unincorporated, for the purpose of controlling, managing, or directing the company, or voting its stock: *Provided*, That this section shall not prevent the granting of proxies by stockholders authorizing a designated individual to represent them at stockholders' meetings. (June 19, 1934, 48 Stat. 1151, ch. 672, § 31, ch. III.)

§ 35-532 [5: 218ee]. Maximum and contingent premiums of mutual companies.

The maximum premium shall be expressed in the policy of a mutual company and it may be solely a cash premium or may be a cash premium and an additional contingent premium, which contingent premium shall not be less than the cash premium, but no mutual company shall issue any insurance policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of at least \$100,000. (June 19, 1934, 48 Stat. 1152, ch. 672, § 32, ch. III.)

#### CROSS REFERENCE

Separation of insurance and fraternal activities, effect, § 35-922.

§ 35-533 [5: 218ff]. Classification of risks, payment of dividends, and creation of surplus by mutual companies.

A mutual company may, in its articles of incorporation or in its by-laws, provide for the classification of its risks and of its members and for the payment of dividends and for the creation of a surplus. (June 19, 1934, 48 Stat. 1152, ch. 672, § 33, ch. III.)

§ 35-534 [5: 218gg]. Mutual company guaranty fund—Mutual company's power to borrow—Approval by superintendent.

A mutual company organized under chapters 3-8 of this title may borrow or assume a liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of the law or as a guaranty fund upon agreement, which shall first be submitted to and approved by the superintendent that such loan or advance, with interest at a rate not exceeding six per centum per annum, shall be repaid out of the earnings, or

profits of such corporation with the approval of the superintendent whenever in his judgment the financial condition of the company shall warrant; but such approval shall not be withheld if, after such repayment shall be made, the company shall have and be in possession of a surplus equal to 10 per centum or more of its gross annual premiums. Any such loan or advance shall not form a part of the legal liabilities of the company, but until repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (June 19, 1934, 48 Stat. 1152, ch. 672, § 34, ch. III.)

§ 35-535 [5: 218hh]. Investment of funds of domestic companies—Underwriting securities—Agreements to withhold securities or property from sale.

A domestic company shall invest its fund only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any state or of the Dominion of Canada or of any province thereof.

(2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or other municipal district within the United States or Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same.

(3) Bonds or notes secured by mortgages or deeds of trust of unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than 50 per centum more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between two-thirds of the value of the land and the amount of the loan: *Provided*, That for the purposes of this section real estate shall not be deemed to be encumbered within the meaning of this section, by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(3a) Bonds or notes secured by mortgages insured by the Federal Housing Administrator: *Provided*, That the restrictions in paragraph (3) of this section in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages.

(4) Bonds or other evidences of indebtedness of the farm loan banks authorized under the Federal Farm Loan Act or acts amendatory thereof or supplementary thereto, and bonds or other evidences of indebtedness of national mortgage associations.

(5) Stocks and bonds and other evidences of indebtedness of any solvent corporation of any state or territory of the United States or of the District or of any province of the Dominion of Canada excepting stock in its own corporation: *Provided*, That no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of five years next preceding



such purchase amounting to not less than 4 per centum on all of such corporation's outstanding capital stocks in each fiscal year for said five years shall not have been paid and upon which bonds any regular interest payment shall have been defaulted any time within five years prior to such purchase or loan.

(6) Loans upon the pledge of any of the securities aforesaid.

(7) A life insurance company may also purchase for its own benefit any policy of life insurance or other obligation of the company and claim of the holders thereof, and may lend to the holders of its life insurance policies sums not exceeding in any case the reserve value of the policy at the time the loan is made, and for the payment of any such loan the policy and all profits thereon shall be pledged.

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(9) A life insurance company may purchase or receive in exchange for any mortgage, contract, judgment, or lien owned or held by it, or for any real estate acquired by it in satisfaction of any mortgage, contract, judgment, or lien upon such real estate, the bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of title 12, chapter 12 of the Code of Laws of the United States of America.

No loan or investment, except loans on the security of life insurance policies, shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in chapters 3-8 of this title shall prohibit a company from accepting in good faith, to protect its interests, securities, or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (June 19, 1934, 48 Stat. 1152, ch. 672, § 35, ch. III; Feb. 3, 1938, 52 Stat. 26, ch. 13, § 12.)

#### AMENDMENT

The 1938 amendment added clause (3a) and the words "and bonds or other evidences of indebtedness of national mortgage associations" to clause (4).

#### CROSS REFERENCES

Other provisions concerning investments, § 35-202.  
Securities permitted for deposits, § 35-416.  
Valuation of securities, § 35-422.

#### § 35-536 [5: 218ii]. Domestic company real-estate holdings—Manner—Disposal.

A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate. (June 19, 1934, 48 Stat. 1152, ch. 672, § 36, ch. III.)

#### CROSS REFERENCES

Conveyances of real estate, formal requisites, § 45-302.  
See notes to § 35-535.

#### § 35-537 [5: 218jj]. Reinsurance by domestic companies in authorized companies.

Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure any part or all of its risks in another such company. But no credit shall be taken for the reserve for unearned premiums on such reinsurance unless the company accepting the reinsurance is authorized to do business in the District by the superintendent, or in one or more States in the United States, and the superintendent shall have approved the reinsurance. (June 19, 1934, 48 Stat. 1154, ch. 672, § 37, ch. III.)

#### CROSS REFERENCE

Reinsurance reserves, § 35-201.

#### § 35-538 [5: 218kk]. Vouchers for disbursements.

No domestic company shall make any disbursement of \$100 or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, or corporation receiving the money and describing the consideration for the payment; and if the expenditure be in connection with any matter pending before any legislative or public body or before any department or officer of any State or government, the voucher shall describe the nature of the matter and the interest of the company therein,



or, if such voucher can not be obtained, the expenditure shall be evidenced by affidavit describing its character and object and stating the reasons for not obtaining such voucher. (June 19, 1934, 48 Stat. 1154, ch. 672, § 38, ch. III.)

§ 35-539 [5: 218U]. Books, records, accounts, and vouchers of domestic companies.

Every domestic company shall keep its books, records, accounts, and vouchers in such manner that its financial condition can be ascertained and so that its financial statements filed with the superintendent can be readily verified. (June 19, 1934, 48 Stat. 1154, ch. 672, § 39, ch. III.)

§ 35-540 [5: 218mm]. Unlawful acquisition by company of its own capital stock.

It shall be unlawful for any company to acquire shares of its own capital stock except upon approval of the superintendent where the total outstanding stock is being diminished in accordance with chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1154, ch. 672, § 40, ch. III.)

#### CROSS REFERENCE

Decrease of capital, § 35-511.

### Chapter 6.—FOREIGN AND ALIEN LIFE COMPANIES

#### Sec.

35-601. Conditions precedent to authority of foreign or alien company to do business in the District.

35-602. Trustees of alien companies.

§ 35-601 [5: 219]. Conditions precedent to authority of foreign or alien company to do business in the District.

A foreign or alien insurance company desiring to transact business in the District shall file with the superintendent:

(a) Its application for certificate of authority, stating the kind or kinds of insurance it proposes to transact.

(b) A copy of its charter, articles of incorporation, or deed or settlement, certified by the official who is required to keep or record the same in the state under whose laws the company is incorporated, or if organized under the laws of a foreign government, province, or state, by the proper official of such government, province, or state.

(c) A copy of its by-laws, or regulations, if any, certified to by the secretary of the company.

(d) Copies of the policies it is issuing or proposes to issue and of the applications therefor.

(e) The instrument authorizing service of process on the superintendent required by chapters 3-8 of this title.

(f) A statement of its financial condition and business, in form as prescribed by law for annual statements, signed and sworn to by the president and secretary or other principal officers of the company. If an alien company, the statement shall comprise only its condition and business in the United States, and shall be signed and sworn to by its United States manager.

(g) It shall satisfy the superintendent that the company is duly organized under the laws of the state, province, or government under whose laws it

professes to be organized, and authorized to do the business it is transacting or proposes to transact, and that its name is not identical with, nor so similar to, that of another company organized prior to the organization of the applying company as to lead to confusion.

(h) It shall satisfy the superintendent that it has, if a capital stock company, paid-up capital stock and surplus at least equal to the capital stock and surplus required of domestic companies invested in accordance with the laws of the District or the government under which it is organized, and, if a company without capital stock, that it has assets at least equal to the assets required of domestic companies and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force, and, if an alien company, that it has a surplus of assets invested according to the laws of the District or of the state in the United States where it has its deposit, held in the United States in trust for the benefit and security of all of its policyholders in the United States, over all its liabilities in the United States, of an amount equal to the surplus of assets required of a like domestic company; and such alien company shall also deposit securities of the amount and value of \$100,000 and of the classes in which insurance companies are permitted by this law to make investments, or satisfy the superintendent that it has on deposit with the official of a state of the United States, authorized by the law of such state to accept such deposit, securities of the amount and value of \$100,000 of the classes in which like insurance companies of such state are permitted to make their investments, for the benefit and security of all policyholders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such state. (June 19, 1934, 48 Stat. 1154, ch. 672, § 1, ch. IV.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8), are hereby repealed."

Section 5, chapter VI, of the act provides as follows: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCES

Application to existing companies, § 35-520.

Deposits of domestic companies, § 35-415 et seq.

Requirements for domestic companies, see chapter 5 of this title.

§ 35-602 [5: 219a]. Trustees of alien companies.

The directors of an alien company may appoint citizens or corporations of the United States, approved by the superintendent, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the superintendent, who may examine such trustees and any officers and agents, books, and papers of the company in the same manner as he may examine officers, agents, books, papers, and affairs of insur-



ance companies. The funds and assets so held by such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by chapters 3-8 of this title. (June 19, 1934, 48 Stat. 1155, ch. 672, § 2, ch. IV.)

#### Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

##### Sec.

- 35-701. Superintendent to value policies—Legal standard of valuation.
- 35-702. Separate classes and accounts to be kept for participating and nonparticipating insurance.
- 35-703. Standard provisions required in life insurance policies.
- 35-704. Provisions prohibited in life insurance policies.
- 35-705. Standard provisions required in annuities and pure endowment contracts.
- 35-706. Extension of time for payment of life premiums.
- 35-707. Interest on policy and premium loans shall be added to principal.
- 35-708. Life-policy forms to be filed with superintendent—Notice of nonconformity—Review.
- 35-709. Provisions required by the laws of a company's own State may be included in policies.
- 35-710. Definition of group life insurance.
- 35-711. Standard provisions for policies of group life insurance.
- 35-712. Standard provisions for accident and health policies.
- 35-713. Stock operations and advisory board contracts prohibited.
- 35-714. Misrepresentations prohibited.
- 35-715. Discriminations prohibited.
- 35-716. Rights of creditors and beneficiaries under policies of life insurance.
- 35-717. Exemption of disability insurance from execution.
- 35-718. Exemption of group life insurance policies from execution.
- 35-719. False statements—Misdemeanor.
- 35-720. Proceeds of certain policies to be held in trust by life company.
- 35-721. When actual premium for life policy is less than net premium.

#### § 35-701 [5: 220]. Superintendent to value policies—Legal standard of valuation.

The superintendent shall annually make valuations of all outstanding policies, additions thereto, and all other life insurance and annuity obligations of every life company doing business in the District. All valuations made by him, or by his authority, shall be made upon the net premium basis.

The legal minimum standard for the valuation of life insurance contracts issued before the 1st day of January, shall be the method and basis of valuation heretofore applied by the superintendent in the valuation of such contracts, and for life insurance contracts issued on and after said date shall be the one-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at  $3\frac{1}{2}$  per centum per annum: *Provided*, That any life company may, at its option, value its insurance contracts issued on and after the passage and approval of chapters 3-8 of this title in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with

interest not higher than  $3\frac{1}{2}$  per centum per annum by the level net premium method or by the modified preliminary term method hereinafter described.

If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the differences between the value at the end of such period of such a twenty payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such twenty payment life preliminary term policy and such limited payment life or endowment policy.

Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with the modified preliminary term method of valuation provided for herein.

The legal minimum standard for the valuation of annuities issued on and after the 1st day of January 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4 per centum per annum, but annuities deferred ten or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premiums therefor, or upon any higher standard at the option of the company.

The legal minimum standard for the valuation of industrial policies issued after the 1st of January 1935, shall be the American Experience Table of Mortality with interest at  $3\frac{1}{2}$  per centum per annum: *Provided*, That any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

Every company shall report the standards used by it in making valuations to the superintendent in its annual statement: *Provided*, That no such standards, if adopted, shall be abandoned without the consent of the superintendent first obtained in writing.

The superintendent may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in other countries than the United States, and in particular cases of invalid lives and other extra hazards; may value policies in groups, use approximate averages for fractions of a year and otherwise, and shall accept the valuation of the insurance department of



any state or country, if made upon a basis and according to standards producing a reserve not lower than herein required or authorized, instead of the valuation herein required if the insurance official of such state or country accepts as sufficient and valid for all purposes the certificate of valuation of the superintendent of the District. (June 19, 1934, 48 Stat. 1156, ch. 672, § 1, ch. V.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8), are hereby repealed."

Section 5, chapter VI, of the act provides: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCES

Actual premium less than net premium, effect, § 35-721.  
Application to existing companies, § 35-520.

§ 35-702 [5: 220a]. Separate classes and accounts to be kept for participating and nonparticipating insurance.

Every life company doing business in the District which issues both participating and nonparticipating policies shall keep the two classes of business separate and shall make, and include in the annual statement to be filed with the superintendent each year a separate statement of the gains, losses, and expenses properly attributable to each of such classes and also showing the manner in which any general outlay of expenses of the company has been apportioned to each. No such life company shall be permitted to do business in the District unless it makes such a separation of its business. This section shall not apply to paid-up, temporary, or pure endowment insurance issued or granted in exchange for lapsed or returned policies. (June 19, 1934, 48 Stat. 1157, ch. 672, § 2, ch. V.)

§ 35-703 [5: 220b]. Standard provisions required in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments with or without return of premiums or of premiums and interest shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935, unless the same shall contain in substance the following:

(1) A provision that all premiums after the first shall be payable in advance, either at the home office of the company or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be designated in the policy.

(2) A provision that the insured is entitled to a grace period of at least thirty days or of one month within which the payment of any premiums after the first year may be made, subject at the option of the company to an interest charge not in excess of 6 per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current

policy year, if any, are paid, the amount of such premiums, with interest on any overdue premiums, may be deducted from any amount payable under the policy in settlement. Grace shall date from the premium-paying date stated in the policy.

(3) A provision that, except as otherwise expressly provided by law, the policy shall constitute the entire contract between the parties and shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval or military service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted; that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties; and that no such statement or statements shall be used in defense of a claim under the policy unless contained in a written application and unless a copy of such statement or statements be endorsed upon or attached to the policy when issued: *Provided*, That nothing contained herein shall apply to applications for reinstatement. A reinstated policy shall be contestable on account of fraud or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(4) A provision that if it shall be found at any time before final settlement under the policy that the age of the insured (or the age of the beneficiary, if considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age, according to the company's rate at date of issue.

(5) A provision that the policy shall participate in the surplus of the company, and any policy containing provisions for participation at the end of the first policy year, and annually thereafter, may also provide that each dividend shall be paid subject to the payment of the premium for the next ensuing year; and the insured under any annual dividend policy shall have the right each year to have the dividend arising from such participation paid in cash; and if the policy shall provide other dividend options, it shall further provide which of said options shall be effective if the insured shall not elect any such other option on or before the expiration of the period of grace allowed for the payment of the premium. This provision shall not apply to any form of paid-up insurance or temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies, or to nonparticipating policies.

(6) A provision that after the policy has been in force three full years the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured less than the reserve at the end of the current policy year on the



policy and on the dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and of total and permanent disability and additional accidental death benefits, less a sum not more than  $2\frac{1}{2}$  per centum of the amount insured by the policy and of any dividend additions thereto (the policy to specify the mortality table and rate of interest adopted for computing such reserve); and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than  $2\frac{1}{2}$  per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the said reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said  $2\frac{1}{2}$  per centum or the one-fifth of the said reserve at the option of the company. This provision shall not be required in term insurance, nor shall it apply to temporary insurance or pure endowment insurance, issued or granted in exchange for lapsed or surrendered policies. The policy may further provide that if the interest on the loan is not paid when due it shall be added to the existing loan and shall bear interest at the same rate.

(7) A provision that in event of default in premium payments, after premiums shall have been paid for three years, the insured shall be entitled to a stipulated form of insurance, effective from the due date of the defaulted premium, the net value of which shall be at least equal to the reserve at the date of default on the policy and on dividend additions thereto, if any, exclusive of the reserve on account of return premium insurance and on total and permanent disability and additional accidental death benefits (the policy to specify the mortality table and rate of interest adopted for computing such reserve); less a specified percentage (not more than two and one-half) of the amount insured by the policy and of existing dividend additions thereto, if any, and less any existing indebtedness to the company on or secured by the policy: *Provided*, That a company may, in lieu of the provision herein permitted for the deduction from the reserve of a sum not more than  $2\frac{1}{2}$  per centum of the amount insured by the policy, and of any dividend additions thereto, insert in the policy a provision that one-fifth of said reserve may be deducted, or may provide therein that a deduction may be made of said  $2\frac{1}{2}$  per centum or one-fifth of said reserve, at the option of the company: *Provided further*, That the policy may be surrendered to the company at its home office within one month of the due date of defaulted premium for a specific cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid: *And provided further*, That the company may defer payment for not more than six months after the application there-

for is made. This provision shall not be required in term insurance of twenty years or less. The net single premium rate employed in computing the term of temporary insurance or the amount of pure endowment insurance granted as a nonforfeiture value under any life insurance policy may at the option of the company be based upon a table of mortality showing rates of mortality not greater than 130 per centum of those shown by the American Men Ultimate Table of Mortality instead of the table used in computing the reserve on the policy, or in case of substandard policies not greater than 130 per centum of the rates of mortality shown by the table of mortality approved by the superintendent for computing the reserve on the policy, anything herein to the contrary notwithstanding.

(8) A provision specifying the options to which the policyholder is entitled in the event of default in a premium payment after three full annual premiums shall have been paid. This provision shall not be required in term insurance of twenty years or less. A provision may also be inserted in the policy that in event of default in a premium payment before such options become available the reserve on any dividend additions then in force may at the option of the company be paid in cash or applied as a net premium to the purchase of paid-up term insurance for any amount not in excess of the face of the original policy.

(9) A table showing in figures the loan values and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy or during the premium paying period if less than twenty years.

(10) A provision that if in event of default in premium payments the value of the policy shall have been applied to the purchase of other insurance as provided for in this section, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums and the payment or reinstatement of any other indebtedness to the company upon said policy, with interest on said premium and indebtedness at the rate of not exceeding 6 per centum per annum payable annually, and that such reinstated policy shall be contestable, on account of suicide, fraud, or misrepresentation of material facts pertaining to the reinstatement, for the same period after reinstatement as provided in the policy with respect to the original issue.

(11) A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death.

(12) A table showing the amount of instalments, if any, in which the policy may provide its proceeds may be payable.

(13) Title on the face and on the back of the policy briefly describing its form.

Any of the foregoing provisions or portions thereof not applicable to single premium or non-participating or term policies shall, to that extent, not be incorporated therein; and any such policy



may be issued or delivered in the District which in the opinion of the superintendent contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance, or to policies issued or granted in exchange for lapsed or surrendered policies, or to group insurance. (June 19, 1934, 48 Stat. 1158, ch. 672, § 3, ch. V.)

#### COMPILER'S NOTE

This section largely supersedes § 35-203, which requires application to be attached and that such application and the policy contain the entire contract.

#### CROSS REFERENCES

Effect of false statements in application, § 35-414.  
 Special provisions governing industrial policies, § 35-1001 et seq.  
 Standard provisions for accident and health policies, § 35-712.  
 Standard provisions for annuity and endowment contracts, § 35-705.  
 Standard provisions for group life policies, § 35-711.  
 Valuation of policies, § 35-701.

#### § 35-704 [5: 220c]. Provisions prohibited in life insurance policies.

No policy of life insurance other than industrial insurance, annuities, and pure endowments, with or without return of premiums or of premiums and interest, shall be issued or delivered in the District or be issued by a life company organized under the laws of the District after the 1st day of January 1935 if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action shall accrue.

(2) A provision by which the policy shall purport to be issued or take effect more than six months before the original application for the insurance was made.

(3) Except for provisions relating to misstatement of age, suicide, aviation, and military or naval service in time of war, a provision for any mode of settlement at maturity, after the expiration of the contestable period of the policy, of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on or secured by the policy, and less any premium that may, by the terms of the policy, be deducted. This paragraph shall not apply to any nonforfeiture provision which employs the cash value less indebtedness, if any, to purchase automatic paid-up or extended insurance.

(4) A provision for forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan, while the total indebtedness on the policy, including interest, is less than the loan value thereof.

(5) A provision to the effect that the agent soliciting the insurance is the agent of the person insured under said policy, or making the acts or representations of such agent binding upon the person so insured under said policy.

(6) A provision permitting the payment of funeral benefits in merchandise or services, or permitting the

payment of any benefits other than in lawful money of the United States.

(7) A provision permitting either contracting to pay, or the payment of, funeral, burial, and other expenses to any designated undertaker or undertaking establishment, or to any particular tradesman or business man, so as to deprive the persons entitled by law to dispose of the body of a deceased, or in any way to control such persons in procuring and purchasing said supplies and services in the open market with the advantage of competition. (June 19, 1934, 48 Stat. 1161, ch. 672, § 4, ch. V.)

#### CROSS REFERENCE

Discrimination prohibited, § 35-715.

#### § 35-705 [15: 220d]. Standard provisions required in annuities and pure endowment contracts.

On and after January 1, 1935, no annuity or pure endowment contract shall be issued or delivered in the District unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him.

Except in the case of a reversionary annuity, otherwise called a "survivorship annuity," or an annuity contracted by an employer in behalf of his employees, no annuity or pure endowment contract shall be so issued or delivered in this District unless it contains, in substance, the following provisions:

First. A provision that there shall be a period of grace, either of thirty days or of one month, within which any stipulated payment to the company falling due after the first year may be made, subject, at the option of the company, to an interest charge thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death during the said period of grace before the overdue payment to the company or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

Second. If statements, other than those relating to age and identity, are required, as a condition of issuing the contract, a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or each of the persons as to whom such statements are required, for a period of two years from its date of issue, except where stipulated payments to the company have not been made, and except for violation of the conditions of the contract relating to military or naval service in time of war, and at the option of the company, provisions relative to benefits in the event of total and permanent disability and provisions which grant insurance specifically against death by accident, may also be expected.

Third. A provision that such contract shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to



such contract, when issued, and in such case such contract shall contain a provision that it, together with the application therefor, shall constitute the entire contract between the parties.

Fourth. A provision that if the age of the person or persons upon whose life or lives the contract is based, or of any of them, has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct age or ages.

Any overpayment or overpayments by the company, on account of misstatement of age, shall with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, be charged against the current or next succeeding payment or payments to be made by the company under the contract.

Fifth. If the contract is participating, a provision that the divisible surplus shall be apportioned annually and dividends shall be payable in cash or shall be applicable to any stipulated payment or payments to the company under the contract.

Sixth. A provision that if the contract after having been in force for three full years, shall, by its terms, lapse or become forfeited because any stipulated payment to the company shall not have been made, the reserve on such contract, computed according to the standard adopted by said company in accordance with this chapter, shall, after deducting one-fifth of the said entire reserve, and any indebtedness to the company under the contract, be applied as a net single payment, according to said standard, for the purchase of a paid-up annuity or pure endowment contract, which may be nonparticipating and which shall be payable by the company under the same terms and conditions, except as to amount, as the original contract. A company may provide, in lieu of such paid-up values, for a paid-up annuity or pure endowment contract in an amount bearing the same proportion to the original annuity or pure endowment contract as the number of stipulated payments which shall have been made to the company shall bear to the total number of stipulated payments required to be made to the company under the contract, and if there be any indebtedness to the company under the contract, the amount of such paid-up annuity or pure endowment shall be reduced by an amount bearing the same proportion to such paid-up annuity or pure endowment as such indebtedness bears to the reserve on such paid-up annuity or pure endowment, computed according to the standard adopted by said company in accordance with this chapter.

Seventh. A provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the company, provided that all overdue stipulated payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract but not exceeding 6 per centum per annum, payable annually. In cases where applicable a company may also include a requirement of evidence of insurability satisfactory to the company.

No contract for a reversionary annuity shall be so issued or delivered unless it contains in substance the following provisions:

A. Provisions "First," "Second," "Third," and "Fifth," of this section, except that under provision "First," the company may, at its option, provide for an equitable reduction of the amount of the annuity payments in settlement of any overdue or deferred payments, in lieu of providing for a deduction of such payments from any amount payable upon a settlement under the contract.

B. A provision that, if the age of any of the persons upon whose lives the contract is based has been misstated, the amount payable under the contract shall be such as the stipulated payments to the company would have purchased at the correct ages.

C. A provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the company, upon production of evidence of insurability satisfactory to the company, provided that all overdue payments and any indebtedness to the company on the contract shall be made or paid, with interest thereon at a rate to be specified in the contract, but not exceeding 6 per centum per annum, payable annually.

Any of the foregoing provisions or portions thereof not applicable to nonparticipating contracts nor to contracts for which a single stipulated payment to the company is made, shall, to that extent, not be incorporated therein; and any such contract may be issued or delivered in this District, which, in the opinion of the superintendent, contains provisions on any one or more of the several foregoing requirements, more favorable to the holder of the contract than hereinbefore required.

Nothing herein contained shall be construed to prevent a life company, which issues life insurance on a participating basis, from issuing annuities, reversionary annuities, or pure endowments on a nonparticipating basis.

Any such contract or any application, endorsement, or rider form used in connection therewith, issued in violation of this section, shall, nevertheless, be held valid, but shall be construed as provided in this section and when any provision in such contract, application, endorsement, or rider is in conflict with any provision of this section or with any other statutory provision, the rights, duties, and obligations of the company, of the holder of the contract and of the beneficiary or annuitant thereunder, shall be governed by the provisions of this section.

The provisions of this section shall not apply to contracts of reinsurance nor to contracts for deferred annuities or reversionary annuities included in life insurance policies.

For the purposes of this section, application forms, rider forms, and endorsement forms for use in connection with any such contract, excepting riders or endorsements relating to the manner of distribution of benefits or to the reservation of rights and benefits under any such contract, and used at the request of the individual holders of such contracts, shall be deemed to be parts of such contract and shall require the approval of the superintendent. No rider and



no endorsement, except as stated above, shall be attached to or printed or stamped upon any such contract issued or delivered in the District until the form of such rider or endorsement has been filed with the superintendent and formally approved by him. (June 19, 1934, 48 Stat. 1161, ch. 672, § 5, ch. V.)

#### COMPILER'S NOTE

This section largely supersedes § 35-203, which requires application to be attached and that the policy and application constitute the entire contract.

#### CROSS REFERENCES

Effect of false statements in application, § 35-414.

Provision prohibited in life policies, § 35-704.

Special provisions governing industrial policies, § 35-1001 et seq.

Standard provision for accident and health policies, § 35-712.

Standard provisions for group life policies, § 35-711.

Standard provisions for life policies, § 35-703.

Valuation of policies, § 35-701.

#### § 35-706 [5: 220e]. Extension of time for payment of life premiums.

A life company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy, as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured, in consideration of such extension, said agreement shall not impair any right existing under the policy. (June 19, 1934, 48 Stat. 1164, ch. 672, § 6, ch. V.)

#### § 35-707 [5: 220f]. Interest on policy and premium loans shall be added to principal.

In ascertaining the indebtedness due upon policy or premium loans the interest, if not paid when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. (June 19, 1934, 48 Stat. 1164, ch. 672, § 7, ch. V.)

#### § 35-708 [5: 220g]. Life-policy forms to be filed with Superintendent—Notice of nonconformity—Review.

A policy of life insurance shall not be issued or delivered in the District until the form of the same has been filed with the superintendent, nor if the superintendent give written notice, within thirty days of such filing to the company proposing to issue it, showing wherein the form of such policy does not comply with the requirements of the laws of the District, provided that such action of the superintendent shall be subject to review by a court of competent jurisdiction. (June 19, 1934, 48 Stat. 1164, ch. 672, § 8, ch. V.)

#### § 35-709 [5: 220h]. Provisions required by the laws of a company's own State may be included in policies.

The policies of a life company, not organized under the laws of the District, may contain any provisions prescribed by the laws of the state, territory, District, or country, under which the company is organized. The policies of a life company, organized

under the laws of the District, may, when issued or delivered in any state, territory, District, or country, contain any provisions required by the laws of the state, territory, District, or country in which the same are issued or delivered, anything in chapters 3-8 of this title to the contrary notwithstanding. (June 14, 1934, 48 Stat. 1164, ch. 672, § 9, ch. V.)

#### § 35-710 [5: 220i]. Definition of group life insurance.

Group life insurance is hereby declared to be that form of life insurance covering not less than twenty-five employees, with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer, or by the employer and employees jointly, and insuring only all of his employees, or all of any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: *Provided, however,* That when the premium is to be paid by the employer and employee jointly and the benefits of the policy are offered to all eligible employees, not less than 75 per centum of such employees may be so insured. Such group policy may provide that the term "employees" shall include the officers, managers, and employees of subsidiary or affiliated corporations, and the individual proprietors, partners, and employees of affiliated individuals and firms, when the business of such subsidiary or affiliated corporations, firms, or individuals is controlled by the common employer through stock ownership, contract, or otherwise.

The following forms of life insurance are hereby declared to be group life insurance within the meaning of this chapter: (a) Life insurance covering the members of one or more companies, batteries, troops, or other units of the National Guard, of any state or the District, written under a policy issued to the commanding general of the National Guard, who shall be deemed to be the employer for the purposes of this chapter, the premium on which is to be paid by the members of such units for the benefits of persons other than the employer: *Provided, however,* That when the benefits of the policy are offered to all eligible members of a unit of the National Guard, not less than 75 per centum of the members of such a unit may be so insured; (b) life insurance covering the members of one or more troops or other units of the state troopers or state police of any state, written under a policy issued to the commanding officer of the state troopers or state police, who shall be deemed to be the employer for the purpose of this chapter, the premium on which is to be paid by the members of such units for the benefit of persons other than the employer: *Provided, however,* That when the benefits of the policy are offered to all eligible members of a unit of the state troopers or state police not less than 75 per centum of the members of such unit may be so insured; (c) life insurance covering not less than fifty employees of the government of the District or of the federal government, with or without medical examination, written under a policy issued to the President of the Board of Commissioners, or to the head of any



federal department or independent federal bureau, board, commission, or other federal independent establishment, or to an association of federal employees, as the case may be, the premium on which is to be paid by the employees and insuring only employees, or any class or classes thereof determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the employer: *Provided*, That when the benefits of the policy are offered to all eligible employees, not less than 75 per centum of such employees may be so insured; (d) life insurance covering the members of any labor union, written under a policy issued to such union, which shall be deemed to be the employer for the purposes of this chapter, the premium on which is to be paid by the union or by the union and its members jointly, and insuring only all of its members who are actively engaged in the same occupation, for amounts of insurance based upon some plan which will preclude individual selection, for the benefit of persons other than the union or its officials: *Provided, however*, That when the premium is to be paid by the union and its members jointly and the benefits are offered to all eligible members, not less than 75 per centum of such members may be so insured: *Provided further*, That when members apply and pay for additional amounts of insurance, a smaller percentage of members may be insured for such additional amounts, if they pass satisfactory medical examinations; (e) life insurance covering only the lives of members of a group of persons for not more than \$2,000 on any one life numbering not less than one hundred new entrants to the group yearly who become borrowers from one lending institution, including subsidiary or affiliated companies, under agreement to repay the sum borrowed in installments or who become purchasers of securities, merchandise, or other property from one vendor under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise, or other property purchased in installments in either event to the extent of their indebtedness to said lending institution or vendor but not to exceed \$2,000 on any one life written under a policy which may be issued upon the application of and made payable to the lending institution or vendor or other creditor to whom such vendor may have transferred title to the indebtedness as beneficiary the premium on such policy to be payable by the borrower lending institution vendor or other creditor. (June 19, 1934, 48 Stat. 1164, ch. 672, § 10, ch. V; July 2, 1940, 54 Stat. —, ch. 518.)

#### AMENDMENT

The act of July 2, 1940, amended the above section by adding subdivision (e) thereto.

#### § 35-711 [5: 220j]. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be issued or delivered in the District, unless and until a copy of the form thereof has been filed with the superintendent and formally approved by him; nor shall a policy be so issued or delivered unless it contains, in substance, the following provisions:

1. A provision that the policy shall be incontestable after two years from its date of issue, except for nonpayment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war.

2. A provision that the policy, the application of the employer, and the individual applications, if any, of the employees insured, shall constitute the entire contract between the parties, and that all statements made by the employer or by the individual employees shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in a written application, but a copy of such written application need not be attached to the policy.

3. A provision for the equitable adjustment of the premium or the amount of insurance payable in the event of a misstatement of the age of an employee.

4. A provision that the company will issue to the employer for delivery to the employee, whose life is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom payable, together with provisions to the effect that in case of the termination of the employment, for any reason whatsoever, the employee shall be entitled to have issued to him by the company, without evidence of insurability, and upon application made to the company, within thirty-one days after such termination, and upon the payment of the premium applicable to the class of risk to which he belongs, and to the form and amount of the policy, at his then attained age, a policy of life insurance in any one of the forms customarily issued by the company, except term insurance, in an amount equal to the amount of his protection under such group-insurance policy at the time of such termination. The provisions of this paragraph shall not apply to insurance described in item (e) of section 35-710.

5. A provision that to the group or class thereof originally insured shall be added, from time to time, all new employees of the employer eligible to insurance in such group or class.

Except as provided in this chapter it shall be unlawful to make a contract of life insurance covering a group in the District.

Policies of group life insurance, when issued in the District by any company not organized under the laws of the District, may contain, when issued, any provision required by the law of the state or territory or District of the United States under which the company is organized; and policies issued in the several states or countries, by companies organized in the District, may contain any provision required by the laws of the District, territory, state, or country in which the same are issued, anything in this section to the contrary notwithstanding. Any such policy may be issued or delivered in the District which, in the opinion of the superintendent, contains provisions on any one or more of the several foregoing requirements more favorable to the employer or to the employee than hereinbefore required. (June 19,



1934, 48 Stat. 1165, ch. 672, § 11, ch. V; July 2, 1940, 54 Stat. —, ch. 518.)

#### COMPILER'S NOTE

This section largely supersedes § 35-203, which requires application to be attached and that policy and application constitute the entire contract.

#### AMENDMENT

The act of July 2, 1940, amended paragraph 4 by adding thereto the last sentence.

#### CROSS REFERENCES

Effect of false statements in application, § 35-414.  
Provisions prohibited in life policies, § 35-704.  
Standard provisions for accident and health policies, § 35-712.  
Standard provisions for annuity and endowment contracts, § 35-705.  
Standard provisions for life policies, § 35-703.  
Valuation of policies, § 35-701.

§ 35-712 [5: 220k]. Standard provisions for accident and health policies.

(a) On and after the 1st day of January, 1935, no policy of insurance against loss or damage from sickness, or bodily injury or death of the insured by accident, shall be issued or delivered to any person in the District by any company organized under this, or any other law of the District, or, if a foreign company, authorized to do business in the District, until a copy of the form thereof, and of the classification of risks and the premium rates appertaining thereto, have been filed with the superintendent; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed, unless the superintendent shall sooner give his written approval thereto. If the superintendent shall give written notice to the company which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427.

(b) No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the company; nor (3) if the policy purports to insure more than one person; (4) nor unless every printed portion thereof and of any endorsement or attached papers shall be plainly printed in type of which the face shall not be smaller than ten point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall not be smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply: *Provided*, That any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances shall be printed in bold-face type and with greater prominence than any other portion of the text of the policy.

(c) Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption "Standard provisions." In each standard provision wherever the word "company" is used there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the company. Said standard provisions shall be:

(1) A standard provision relative to the contract, which may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and form (B) to be used in policies which do so provide. If form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured":

(A) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B) 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the company's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the company for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the company in accordance with such law, but if such filing is not required by such law then they shall mean the company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the company is liable.

(2) A standard provision relative to changes in the contract, which shall be in the following form:

2. No statement made by the applicant for insurance, not included herein, shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the company and such approval be endorsed hereon.



(3) A standard provision relative to reinstatement of policy after lapse which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness.

(A) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C) 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the company or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

(4) A standard provision relative to time of notice of claim, which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; form (B) to be used in policies which insure only against loss from sickness; and form (C) to be used in policies which insure against loss from both accident and sickness. If form (A) or form (C) is used the company may at its option add thereto the following sentence: "In event of accidental death immediate notice thereof must be given to the company."

(A) 4. Written notice of injury on which claim may be based must be given to the company within twenty days after the date of the accident causing such injury.

(B) 4. Written notice of sickness on which claim may be based must be given to the company within ten days after the commencement of the disability from such sickness.

(C) 4. Written notice of injury or of sickness on which claim may be based must be given to the company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

(5) A standard provision relative to sufficiency of notice of claim which shall be in the following form and in which the company shall insert in the blank space such office and its location as it may desire to designate for such purpose of notice:

5. Such notice given by, or in behalf of the insured or beneficiary as the case may be, to the company at \_\_\_\_\_, or to any authorized agent of

(Full address)  
the company, with particulars sufficient to identify the insured, shall be deemed to be notice to the company. Failure to give notice, within the time provided in this policy, shall not invalidate any claim if it shall be shown not to have been reasonably pos-

sible to give such notice and that notice was given as soon as was reasonably possible.

(6) A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss as follows:

6. The company, upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss: If such forms are not so furnished within fifteen days after receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy, as to proof of loss, upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made.

(7) A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A) 7. Affirmative proof of loss must be furnished to the company at its said office within ninety days after the date of the loss for which claim is made.

(B) 7. Affirmative proof of loss must be furnished to the company at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C) 7. Affirmative proof of loss must be furnished to the company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the company is liable, and in case of claim for any other loss, within ninety days after date of such loss.

(8) A standard provision relative to examination of the person of the insured and relative to autopsy which shall be in the following form:

8. The company shall have the right and opportunity to examine the person of the insured, when and so often as it may reasonably require during the pendency of claim hereunder; and also the right and opportunity, in the case of death, to have autopsy performed, where it is not forbidden by law.

(9) A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The company shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire, form (A) to be used in policies which do not provide indemnity for loss of time on account of disability and form (B) to be used in policies which do so provide.

(A) 9. All indemnities provided in this policy will be paid \_\_\_\_\_ after receipt of due

(Indicate time)

proof.

(B) 9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid \_\_\_\_\_ after receipt of

(Indicate time)

due proof.

(10) A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provisions shall be in the following



form, and which may be omitted from any policy not providing for such indemnity. The company shall insert, in the first blank space of the form, appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half; and in the second blank space shall insert any period of time not exceeding sixty days.

10. Upon request of the insured and subject to due proof of loss \_\_\_\_\_ accrued indem-

(Within time to be inserted)

nity for loss of time on account of disability will be paid at the expiration of each \_\_\_\_\_

(Insert time)

during the continuance of the period for which the company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

(11) A standard provision relative to indemnity payments which may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary and form (B) to be used in policies which do not designate any beneficiary other than the insured.

(A) 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B) 11. All the indemnities of this policy are payable to the insured.

(12) A standard provision providing for cancellation of the policy at the instance of the insured which shall be in the following form:

12. If the insured shall at any time change his occupation to one classified by the company as less hazardous than that stated in the policy, the company, upon written request of the insured and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

(13) A standard provision relative to the rights of the beneficiary under the policy which shall be in the following form and which may be omitted from any policy not designating a beneficiary.

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

(14) A standard provision limiting the time within which suit may be brought upon the policy as follows:

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

(15) A standard provision relative to time limitations of the policy as follows:

15. If any time limitation of this policy, with respect to giving notice of claim or furnishing proof of loss, is less than that permitted by the law of the State in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

(d) No such policy shall be so issued or delivered which contains any provision (1) relative to cancellation at the instance of the company; or (2) limiting the amount of indemnity to a sum less than the amount stated in the policy and for which the premium has been paid; or (3) providing for the deduction of any premium from the amount paid in settlement of claim; or (4) relative to other insurance by the same company; or (5) relative to the age limits of the policy; unless such provisions, which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth, but the company may at its option omit from the policy any such optional standard provision. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in subdivision (c) of this section.

(1) An optional standard provision relative to cancellation of the policy at the instance of the company as follows:

16. The company may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the company, together with cash or the company's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

(2) An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:

17. If the insured shall carry with another company, corporation, association, or society other insurance covering the same loss without giving written notice to the company, then in that case the company shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

(3) An optional standard provision relative to deduction of premium upon settlement of claim as follows:

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(4) An optional standard provision relative to other insurance by the same company which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank space of which the company shall insert such upward limits of indemnity as are specified by the company's classification of risks, filed as required by this section.

(A) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity in excess of \$\_\_\_\_\_, the excess insurance shall

(Amount to be inserted)

be void and all premiums paid for such excess shall be returned to the insured.

(B) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity for



loss of time on account of disability in excess of \$\_\_\_\_\_ weekly, the excess insurance shall (Amount to be inserted) be void and all premiums paid for such excess shall be returned to the insured.

(C) 19. If a like policy or policies, previously issued by the company to the insured, be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$\_\_\_\_\_ or the aggregate (Amount to be inserted)

indemnity for loss of time on account of disability in excess of \$\_\_\_\_\_ weekly, the excess in- (Amount to be inserted)

surance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(5) An optional standard provision relative to the age limits of the policy which shall be in the following form and in the blank spaces of which the company shall insert such numbers of years as it may elect.

20. The insurance under this policy shall not cover any person under the age of \_\_\_\_\_ years nor over the age of \_\_\_\_\_ years. Any premium paid to the company for any period not covered by this policy will be returned upon request.

(e) No such policy shall be so issued or delivered if it contains any provision contradictory, in whole or in part, of any of the provisions hereinbefore in this section designated as "standard provisions" or as "optional standard provisions"; nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the said "standard provisions" or the said "optional standard provisions"; nor shall such policy be so issued or delivered if it contains any provision purporting to make any portion of the charter, constitution, or by-laws of the company a part of the policy unless such portion of the charter, constitution, or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the superintendent in accordance with the provisions of this section.

(f) The falsity of any statement in the application for any policy covered by this section shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the company.

(g) The acknowledgment by a company of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the company in defense of any claim arising under such policy.

(h) No alteration of any written application for insurance by erasure, insertion, or otherwise shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the company, or by any employee

of the company with the company's knowledge or consent, then such act shall be deemed to have been performed by the company thereafter issuing the policy upon such altered application.

(i) A policy issued in violation of this section shall be held valid but shall be construed as provided in this section and when any provision in such a policy is in conflict with any provision of this section the rights, duties, and obligations of the company, the policyholder, and the beneficiary shall be governed by the provisions of this section.

(j) The policies of insurance against accidental bodily injury or sickness issued by a company not organized under the laws of the District may contain, when issued in the District, any provision which the law of the state, territory, or District of the United States under which the company is organized prescribes for insertion in such policies, and the policies of insurance against accidental bodily injury or sickness issued by a company organized under the laws of the District may contain, when issued or delivered in any other state, territory, District, or country, any provision required by the laws of the state, territory, District, or country in which the same are issued, anything in this section to the contrary notwithstanding.

(k) (1) Nothing in this section, however, shall apply to or affect any policy of liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any employer, whether a corporation, copartnership, association, or individual or to any police or fire department, underwriters corps, salvage bureau, or to any association of fifty or more members having a constitution or by-laws and formed in good faith for purposes other than that of obtaining insurance, where not less than 75 per centum of the members or employees are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

(2) Nothing in this section shall apply to or in any way affect contracts supplemental to contracts of life or endowment insurance where such supplemental contracts contain no provisions except such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness: *Provided*, That no such supplemental contract shall be issued or delivered to any person in the District unless and until a copy of the form thereof has been submitted to and approved by the superintendent under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him.

(3) The provisions of this section contained in clause (5) of subdivision (b) and clauses (2), (3), and (12) of subdivision (c) may be omitted from railroad-ticket policies sold only at railroad stations, or at railroad-ticket offices by railroad employees.



(l) Any company, or other insurer, or any officer or agent thereof, which or who issues or delivers to any person in the District any policy in violation of the provisions of this section, shall be punished, upon conviction, by a fine of not more than \$500 for each offense, and the superintendent may revoke the certificate of authority of any company, corporation, association, society, or other insurer of any state or country, or the license of the agent thereof, which or who violates any provisions of this section.

(m) The term "indemnity" as used in this section, means benefits promised. (June 19, 1934, 48 Stat. 1166, ch. 672, § 12, ch. V.)

#### CROSS REFERENCES

Health and accident companies, §§ 35-202, 35-1301 et seq.  
Health and accident policies issued by companies operating under the "Fire and Casualty Act" may be required to comply with this section, § 35-1332.

Standard provisions for annuity and endowment contracts, § 35-705.

Standard provisions for group life policies, § 35-711.

Standard provisions for life policies, § 35-703.

§ 35-713 [5: 220f]. Stock operations and advisory board contracts prohibited.

No life company doing business in the District shall issue in the District, nor permit its general agents, agents, officers, solicitors, or employees to issue or deliver in the District, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board or other contracts of any kind promising returns and profits as an inducement to insure; and no life company shall be authorized to do business in the District which issues or permits its general agents, agents, officers, solicitors, or employees to issue in the District or in any state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporations, or securities or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance; and no corporation or stock company acting as agent of a life company nor any of its general agents, agents, officers, solicitors, or employees shall be permitted to sell, agree, or offer to sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or in connection therewith. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however*, That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1173, ch. 672, § 13, ch. V.)

§ 35-714 [5: 220m]. Misrepresentations prohibited.

No life company doing business in the District, and no officer, director, general agent, agent, or solicitor thereof, broker, or any other person shall make, issue, or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any

sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or shares of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or officer, director, general agent, agent, or solicitor thereof, broker or any other person, firm, association, or corporation make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. It shall be the duty of the superintendent, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, to revoke the authority of the company or agent so offending: *Provided, however*, That the action of the superintendent in this regard shall be subject to appeal and review in the form and manner prescribed in section 35-427. (June 19, 1934, 48 Stat. 1174, ch. 672, § 14, ch. V.)

#### CROSS REFERENCE

Revocation or suspension of agent's or broker's license, § 35-426.

§ 35-715 [5: 220n]. Discriminations prohibited.

No life insurance corporation doing business in the District shall make or permit any discriminations between individuals of the same class or of equal expectation of life, in the amount of payment or return of premiums or rates charged for policies of insurance, including endowment policies and annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms or conditions of the policy; nor shall any such company permit or agent thereof offer to make any contract of insurance, endowment policy, or annuity contract, or agreement as to such contracts other than as plainly expressed in the policy issued thereon, nor shall any such company or officer, agent, solicitor, or representative thereof pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to any person to insure, or give, sell, or purchase, or offer to give, sell, or purchase as such inducement or in connection with such insurance, endowment policy, or annuity contract, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profit accruing thereon, or any valuable consideration or inducement whatever not specified in the policy, nor shall any person knowingly receive any such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying and producing any books, papers, or other documents before any court or magistrate, upon any investigation, proceeding, or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him



of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Nothing in this section shall be so construed as to forbid a company, transacting industrial life insurance, from returning to policyholders, who have made premium payments for a period of at least one year, directly to the company at its home or distant offices, a percentage of such a premium which the company would have paid for the collection thereof. (June 19, 1934, 48 Stat. 1174, ch. 672, § 15, ch. V.)

## CROSS REFERENCE

Provisions prohibited in life policies, § 35-704.

§ 35-716 [5: 220o]. Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avail against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person: *Provided*, That subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specifications of the amount claimed. (June 19, 1934, 48 Stat. 1175, ch. 672, § 16, ch. V.)

§ 35-717 [5: 220p]. Exemption of disability insurance from execution.

No money or other benefit paid, provided, allowed, or agreed to be paid by any company on account of the disability from injury or sickness of any insured person shall be liable to execution, attachment, garnishment, or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law, to pay any debt or liability of such insured person whether such debt or liability was incurred before or after the commencement of such disability, but the provisions of this section shall not affect the assignability of any such disability benefit otherwise assignable, nor shall

this section apply to any money income disability benefit in an action to recover for necessities contracted for after the commencement of the disability covered by the disability clause or contract allowing such money income benefit. (June 19, 1934, 48 Stat. 1175, ch. 672, § 16a, ch. V.)

## NOTES TO DECISIONS

## ALIMONY

Liability for alimony and support payments to divorced wife is not a "debt or liability" within the meaning of this exemption. *Schlaefter v. Schlaefter* (71 App. D. C. 350, 112 Fed. (2d) 177).

Payments of disability insurance are not exempt from liability for alimony and for support of divorced wife. *Schlaefter v. Schlaefter* (71 App. D. C. 350, 112 Fed. (2d) 177).

## DISPOSITION OF INSURANCE

So far as general creditors are concerned, the purpose of this provision is clear, with the exceptions stated, to make disposition of these funds a matter solely for the insured's judgment. *Schlaefter v. Schlaefter* (71 App. D. C. 350, 112 Fed. (2d) 177).

## REASON FOR LAW

Congress regarded it better for creditors to go unpaid than to deprive the debtor and his dependents of this means of support when earning capacity would be cut off *Schlaefter v. Schlaefter* (71 App. D. C. 350, 112 Fed. (2d) 177).

§ 35-718 [5: 220q]. Exemption of group life insurance policies from execution.

No policy of group life insurance, nor the proceeds thereof when paid to any employee or employees thereunder, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts. (June 19, 1934, 48 Stat. 1176, ch. 672, § 17, ch. V.)

§ 35-719 [5: 220r]. False statements—Misdemeanor.

Any agent, broker, examining physician, or other person who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for life insurance, or who shall make any such statement for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under chapters 3-8 of this title shall be guilty of a misdemeanor. (June 19, 1934, 48 Stat. 1176, ch. 672, § 18, ch. V.)

§ 35-720 [5: 220s]. Proceeds of certain policies to be held in trust by life company.

Any life company licensed under the laws of the District shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors or beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not



be required to segregate funds so held, but may hold them as a part of its general corporate assets. (June 19, 1934, 48 Stat. 1176, ch. 672, § 19, ch. V.)

§ 35-721 [5: 220t]. When actual premium for life policy is less than net premium.

When the actual premium charged for an insurance policy by any company is less than the net premium on the basis adopted by the company for the valuation of such policy under section 35-701, such company shall be charged as a separate liability with a deficiency reserve equal to the total present value of the future deficiencies in the actual premium calculated according to the table of mortality and rate of interest employed by the company for the valuation of such policy. (June 19, 1934, 48 Stat. 1176, ch. 672, § 20, ch. V.)

#### Chapter 8.—LIFE INSURANCE ACT—PENALTIES—CONSTITUTIONALITY

Sec.

- 35-801. Penalties.
- 35-802. Testimony—Production of books—Immunity of witness.
- 35-803. Constitutionality.

§ 35-801 [5: 221]. Penalties.

Any person, partnership, or company who violates any of the provisions of chapters 3-8 of this title, or fails to comply with any duty imposed upon him or it by any provision of chapters 3-8 of this title, for which violation or failure no penalty is elsewhere provided by the laws of the District, shall be fined not exceeding \$500 for each and every violation. (June 19, 1934, 48 Stat. 1176, ch. 672, § 1, ch. VI.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, ch. VI, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8), are hereby repealed."

Section 5 of chapter VI of the act provided as follows: "This act shall become effective immediately upon passage and approval."

#### CROSS REFERENCE

Application to existing companies, § 35-520.

§ 35-802 [5: 221a]. Testimony—Production of books—Immunity of witness.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 3-8 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (June 19, 1934, 48 Stat. 1176, ch. 672, § 2, ch. VI.)

§ 35-803 [5: 221b]. Constitutionality.

Should any section or provision of chapters 3-8 of this title be decided by the courts to be unconstitutional or invalid, the validity of chapters 3-8 of this title as a whole or of any part thereof other than the part decided to be unconstitutional shall not be affected. (June 19, 1934, 48 Stat. 1177, ch. 672, § 3, ch. VI.)

#### Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

Sec.

- 35-901. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.
- 35-902. Existing associations.
- 35-903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.
- 35-904. Annual reports.
- 35-905. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.
- 35-906. Permit to do business from Superintendent of Insurance—Fee.
- 35-907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.
- 35-908. Reincorporation of associations existing prior to January 1, 1902.
- 35-909. Incorporation of subordinate bodies—Procedure.
- 35-910. Contract invalid if beneficiary to pay assessments.
- 35-911. Benefits exempt from attachment.
- 35-912. Meetings.
- 35-913. Fraudulent representations—Penalty.
- 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.
- 35-915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.
- 35-916. This law not to apply to associations for profit.
- 35-917. This law not to apply to associations or individuals using name of previously existing corporation.

#### JUVENILE FRATERNAL ACT

- 35-918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.
- 35-919. Contributions—How computed.
- 35-920. Reserves.
- 35-921. Enforcement of payment of contributions—Rules and regulations.

#### SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

- 35-922. Separation of insurance and fraternal activities authorized.
- 35-923. Certificate to be filed with Superintendent of Insurance—Contents.
- 35-924. Approval and certificate of superintendent—Recording.
- 35-925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.
- 35-926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.
- 35-927. Contracts not impaired—Right of repeal and amendment reserved.
- 35-928. Insurance laws of States and District applicable.

§ 35-901 [5: 141]. Definition—When disability payable—Reserves—To whom benefits payable—Exemption from general insurance laws.

A fraternal beneficial association is hereby declared to be a corporation, society, order, or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries,



and not for profit, having a lodge system with ritualistic form of work and representative form of government, making provision for the payment of benefits in case of death. Each such association may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident, or old age: *Provided*, That the period in life at which physical disability benefits on account of old age commences shall not be under seventy years, or the age of expectancy from the time of entering, subject to their compliance with its laws. Any such association may create and maintain a reserve, emergency, or benefit fund in accordance with its laws. Any such association having a reserve, emergency, or benefit fund may, in addition to the benefits hereinbefore named, pay withdrawal benefits, not exceeding the contributions of such member, to a member unable or unwilling to continue membership, provided such membership shall continue not less than three successive years. Such association may also, after ten years of membership, apply its funds and accumulations as its laws provide or the association and members agree. The fund from which the payments of such benefits shall be made and the fund from which the expenses of such association shall be defrayed shall be derived from assessments, dues, and other payments collected from its members or otherwise. The payment of death benefits shall be to the families, heirs, blood relatives, affianced husband, affianced wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution, or to persons dependent upon the member or upon whom the member is dependent. Such association shall be governed by sections 35-901 to 35-917, and shall be exempt from the provisions of insurance laws of the United States relating to the District of Columbia, and no law hereafter passed shall apply to them unless they be expressly designated therein: *Provided, however*, That the fact that any such association has outstanding agreements with its members for the payment of benefits other than those herein specified, if it is making no new contracts of that character and is retiring those already existing, shall not exclude such association from the operation of sections 35-901 to 35-917. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1.)

#### COMPILER'S NOTES

The act of 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws in so far as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, Chapters 3-8 of this title), are hereby repealed."

Any provisions of this chapter in conflict with the "Fire and Casualty Act" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

#### AMENDMENT

The 1928 amendment added in the seventh sentence relating to the persons entitled to death benefits "father-

in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepchildren, stepbrother, stepsister, children or parents by legal adoption, member's estate, a charitable, benevolent, educational, or eleemosynary institution," and "or upon whom the member is dependent."

The amending act also provided in section 2 "all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

#### CROSS REFERENCES

Application of act, §§ 35-916, 35-917.

Juvenile Fraternal Act, §§ 35-918 to 35-921.

Separation of insurance and fraternal activities, § 35-922 et seq.

#### NOTES TO DECISIONS

##### AMENDMENTS OF CHARTER

The amendment of the charter of a fraternal benefit association, which originally had been a joint-stock company, from depriving certificate holders of the right formerly had of designating beneficiaries, will not affect existing insurance contracts in the absence of anything in the charter showing that it was intended to have a retrospective effect. *Brown v. Grand Fountain* (28 App. D. C. 200).

##### AMENDMENTS TO CONSTITUTION

A committee appointed by a fraternal beneficial association to revise the laws and constitution does not have authority to originate and propose methods without the notice as required for amendments generally, as to abolition of both constitution and laws. *National Council Junior Order United American Mechanics v. State Council* (27 App. D. C. 1).

##### BENEFICIARIES

This section permitted as beneficiaries only families, heirs, blood relatives, affianced husband, affianced wife, or dependents. Certificate in favor of woman who had been living with the insured, knowing that he had a legal wife living, was void. *Electrical Workers Ben. Assn. v. Brown* (58 App. D. C. 203, 26 Fed. (2d) 981).

Police Relief Association could not authorize payment of benefit certificates to persons other than those designated by statute as eligible beneficiaries. *Simpkins v. McDermott* (65 App. D. C. 123, 81 Fed. (2d) 257), cert. den. (297 U. S. 715, 80 L. Ed. 1001, 56 Sup. Ct. 592).

##### BY-LAWS

When by-laws of fraternal beneficial association imposes upon the officers of local councils the duty of receiving and transmitting all assessments and dues to the central committee, a provision in such by-laws that the officers of each local council shall be agents solely of such council and its members, is not consistent with duty and agency imposed by central governing body, and it cannot defeat claim upon certificate of insurance issued by the association. *Prudent Patricians of Pompeii v. Marr* (20 App. D. C. 363).

##### PAYMENT OF DUES

Courts will ordinarily not concern themselves with questions of the good standing of members of such organizations, but when good standing depends solely on payment of dues the civil courts will not hesitate to take cognizance. *Prudent Patricians of Pompeii v. Marr* (20 App. D. C. 363). See also *Berkley v. Harper* (3 App. D. C. 308); *Moss v. Littleton* (6 App. D. C. 201); *Drum V. Benton* (13 App. D. C. 245).

##### REINSTATEMENT

Right of reinstatement is personal to the member of a fraternal beneficial association, and it does not survive to the personal representatives or beneficiaries, and if member dies within specified 30 days as stipulated in by-laws, there can be no recovery. *Supreme Commandery of United Order of Golden Cross v. Bernard* (26 App. D. C. 169, 6 Ann. Cas. 694).

§ 35-902 [5: 142]. Existing associations.

All such associations coming within the description as set forth in section 35-901, organized under the laws of the United States relating to said District, or of any state, country, province, or territory, and



doing business in said District on January 1, 1902, may continue such business: *Provided*, That they comply with the provisions of sections 35-901 to 35-917 regulating annual reports and the designation of the Superintendent of Insurance of said District, provided for in section 35-101 et seq., as the person upon whom process may be served as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750.)

**§ 35-903 [5: 143]. Nonresident associations — Conditions precedent to doing business in District—Right of superintendent to examine.**

Any such association coming within the description as set forth in section 35-901, organized under the laws of any state, country, province, or territory, and not doing business in said District on January 1, 1902, shall be admitted to do business within said District when it shall have filed with the Superintendent of Insurance a duly certified copy of its charter and articles of association and a copy of its by-laws, certified to by its secretary or corresponding officer, together with an appointment of the said superintendent as the person upon whom process may be served as hereinafter provided: *Provided*, That such association shall be shown to be authorized to do business in the state, country, province, or territory in which it is incorporated or organized, in case the laws of such state, country, province, or territory shall provide for such authorization; and in case the laws of such state, country, province, or territory do not provide for any formal authorization to do business on the part of any such association, then such association shall be shown to be conducting its business in accordance with the provisions of sections 35-901 to 35-917; for which purpose the said superintendent may personally, or by some person to be designated by him, examine into the condition, affairs, character, and business methods, accounts, books, and investments of such association at its home office, which examination shall be at the expense of such association and shall be made within thirty days after demand therefor, and the expense of such examination shall be limited to fifty dollars. Any association doing business under the provisions of sections 35-901 to 35-917 shall be permitted to do business upon filing annually with the Superintendent of Insurance the certificate of authority of the insurance department of the state, province, or territory in which it is incorporated or organized: *Provided, however*, That in case of failure to file said certificate by any such association, or in case the Superintendent of Insurance shall deem it necessary, he shall have power, either personally or by some person designated by him, to examine into the condition, affairs, character, business methods, accounts, books, and investments of such association, at its home office, which examination shall be at the expense of the association. The amount of such expense shall not exceed one hundred dollars for associations which have no reserve or emergency fund and two hundred dollars for associations with a reserve or emergency fund. (Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751.)

## CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Other provisions concerning inspection and examination of insurance companies, §§ 35-108, 35-201, 35-202, 35-418, 35-1313.

**§ 35-904 [5: 144]. Annual reports.**

Every such association doing business in said District shall, on or before the first day of March of each year, make and file with the said superintendent a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such report shall be upon blank forms to be provided by the said superintendent, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall be published, or the substance thereof, in the annual report of the said superintendent under a separate part entitled "Fraternal Beneficial Associations," and shall contain answers to the following questions:

First. Number of certificates issued during the year or members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment for the year.

Sixth. Total amount paid members, beneficiaries, legal representatives, or heirs.

Seventh. Number and kind of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. If so, how much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount received, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee in its certificate fixed amounts to be paid regardless of amount realized from assessments, dues, admission fees, and donations?

Fourteenth. If so, state amount guaranteed and the security of such guaranty.

Fifteenth. Has the association a reserve or emergency fund?

Sixteenth. If so, how is it created, and for what purpose, the amount thereof, and how invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many; and the amount of indemnity in each case.

Nineteenth. Number of members in each class.

Twentieth. If voluntary, so state; and give date of organization.

Twenty-first. If organized under the laws of said District, under what law and at what time, giving chapter and year, and date of passage of the act.



Twenty-second. If organized under the laws of any state, country, province, or territory, state such fact and the date of organization, giving chapter and year, and date of passage of the act.

Twenty-third. Number of certificates of beneficial membership lapsed during the year.

Twenty-fourth. Number in force at beginning and end of year; if more than one class, number in each class.

Twenty-fifth. Names and addresses of its president, secretary, and treasurer, or corresponding officers. (Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752.)

§ 35-905 [5:145]. Nonresident associations to name superintendent attorney upon whom process may be served—Sufficiency—Notice by mail—Fee—Record.

Each such association doing business on January 1, 1902, or thereafter admitted to do business within said District, and not having its principal office within said District, and not being organized under the laws of the United States relating to said District, shall appoint, in writing, the said superintendent and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in said District. Copies of said certificate certified by said superintendent shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against such association is served upon said superintendent he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the said superintendent at the time of such service a fee of three dollars which shall be recovered by him as a part of the taxable costs if he prevails in his suit. The said superintendent shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 753.)

§ 35-906 [5:146]. Permit to do business from Superintendent of Insurance—Fee.

The said superintendent shall, upon the application of any association having the right to do business within said District, as provided by sections 35-901 to 35-917, issue to such association a permit in writing authorizing such association to do business within said District, for which certificate and all proceedings in connection therewith such association shall pay the said superintendent the fee of five dollars. (Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754.)

#### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Fraternal benefit associations exempted from provision of general law governing taxes and license fees for insurance companies, § 47-1808.

§ 35-907 [5:147]. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

Any nine or more persons, at least one-third of whom shall be residents of the District of Columbia, being desirous of forming a fraternal beneficial association for the purposes set forth in section 35-901 may associate themselves together and effect such organization as hereinafter prescribed, and not otherwise. Such persons shall make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this District and file in the office of the recorder of deeds of said District a certificate of declaration in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated the name or title by which said association shall be known to law; the mode and manner in which the corporate powers granted by sections 35-901 to 35-917 are to be exercised; the name or official title of the officers, trustees, representatives, or other persons by whatever name or title designated, who are to have and exercise the general control and management of its affairs; the place of doing business defined; the limit as to age of applicants for beneficial membership, which shall not exceed fifty-five years, and that medical examinations are required of applicants for life benefits, together with the sworn statement by three of said corporators that at least one hundred persons eligible under the proposed laws of such association to membership therein have in good faith made application in writing for membership. The recorder of deeds, upon the filing of said declaration, shall deliver to such association a certified copy of the papers so filed and recorded in his office, together with a certificate to such association, stating that the provisions in sections 35-901 to 35-917 relative to incorporation have been complied with and that said association becomes thereby authorized to carry on the work of a fraternal beneficial association. Upon filing the certificate or declaration as aforesaid, the persons who shall have signed and acknowledged the same, and their successors and associates, shall, by the provisions of sections 35-901 to 35-917, be a body politic and corporate by the name and style stated in the certificate, and by that name and style shall have perpetual succession, and by said name may sue and be sued, and may have and use a common seal, and the same may alter and change at pleasure, and may make and alter, at times or from time to time, such laws, not inconsistent with the Constitution of the United States or the laws in force in said District, as they may deem necessary for the government of said association. And they and their successors, by their corporate name, shall in law be capable of creating, maintaining, and disbursing a reserve or emergency fund in accordance with its laws and the provisions



of sections 35-901 to 35-917, and of taking, receiving, purchasing, and holding real and personal estate necessary for the purpose of such association, and may let, place out at interest, or sell and convey the same as may seem most beneficial for said association. The association shall elect from its members trustees, directors, or managers, by whatever title known in its laws, at such time and place and in such manner as may be specified in its laws, who shall have the control and management of the affairs and funds of said association, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or otherwise, such vacancy shall be filled in such manner as shall be provided by the laws of said association. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755.)

**§ 35-908. [5:148]. Reincorporation of associations existing prior to January 1, 1902.**

The officers, trustees, directors, or governing body of any fraternal beneficial association existing on January 1, 1902, may, by conforming to the requirements of the several provisions of sections 35-901 to 35-917, reincorporate themselves or continue their existing corporate powers under sections 35-901 to 35-917, or change their name, stating in their certificate the original name of such corporation as well as their new name assumed, and all the property and effects of such existing corporation shall vest in and belong to the corporation so reincorporated or continued. (Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756.)

**COMPILER'S NOTE**

The Code of the Laws of the District of Columbia enacted March 3, 1901, 31 Stat. 1189, ch. 854, by its preamble provided that it should become effective January 1, 1902.

**§ 35-909 [5:149]. Incorporation of subordinate bodies—Procedure.**

Any subordinate body of any fraternal beneficial association incorporated under the provisions of sections 35-901 to 35-917 or of such association doing business in this District under sections 35-901 to 35-917, where the laws of the governing body of said association do not prohibit the incorporation of their subordinate bodies, may become a body corporate in the manner following: At some regular meeting of such subordinate body a resolution expressing the desire of such subordinate body to be incorporated, and directing its officers to perfect such incorporation, shall be submitted to a vote of the members present, and if two-thirds of the members present vote therefor the president and secretary of such subordinate body, or the officers holding relative offices therein, shall prepare articles of association, under their hands and the seal of such subordinate body, setting forth, first, the number of members of such subordinate body then in good standing; second, the name by which said subordinate body is known; third, the date of its organization and the period for which it is to be incorporated, not exceeding thirty years. A copy of such articles of association shall be filed with the recorder of deeds, and shall by him be recorded, together with the affidavit hereafter named, in a book to be kept for that purpose.

On the execution of said articles of association and before the filing thereof with the recorder the secretary of such subordinate body shall annex thereto his affidavit, stating that he is a member in good standing in such subordinate body and occupies the position of secretary, or the office corresponding therewith, and that the resolution, a copy of which shall be set forth at length, was regularly passed at a regular meeting of said subordinate body and received the vote of two-thirds of the members present and voting, and that, to the best of his knowledge and belief, the statements made in the articles of association are true, and that such subordinate body is organized and acting under the laws of its respective association, giving the name by which such association is known. When the foregoing requirements are complied with such subordinate body shall be a body corporate by the name expressed in such articles, and by that name shall be a person in law, capable of suing and being sued in the courts, and taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified to by the recorder of deeds, shall be prima facie evidence in all courts and places of the existence and the due incorporation of such subordinate body. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757.)

**§ 35-910 [5:150]. Contract invalid if beneficiary to pay assessments.**

No contract with any such association shall be valid when there is a contract, agreement, or understanding between the member and the beneficiary prior to or at the time of becoming a member of the association that the beneficiary, or any person for him, shall pay such member's assessments and dues, or either of them. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758.)

**NOTES TO DECISIONS**

**WAIVER OF REQUIREMENTS**

Quaere: Whether beneficial order can waive provisions of this section. *Columbian Fraternal Assn. v. Smith* (54 App. D. C. 308, 297 Fed. 837).

The provisions of the section are not waived when order has no knowledge of agreement between insured and beneficiary whereby latter pays the assessment. *Columbian Fraternal Assn. v. Smith* (54 App. D. C. 308, 297 Fed. 837).

**§ 35-911 [5:151]. Benefits exempt from attachment.**

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any association authorized to do business under sections 35-901 to 35-917 shall not be liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in the certificate, or any person who may have any right thereunder. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759.)

**§ 35-912 [5:152]. Meetings.**

Any such association organized under the laws of said District may provide for the meetings of its legislative or governing body in any state, country, province, or territory wherein such association shall have subordinate bodies, and all business transacted



at such meetings shall be valid in all respects as if such meetings were held within said District; and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any state, country, province, or territory shall be valid as if cast within said District. (Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760.)

**§ 35-913 [5: 153]. Fraudulent representations — Penalty.**

Any person, officer, member, or examining physician who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership or for restoration to membership or for the purpose of obtaining any money or benefit in any association transacting business under sections 35-901 to 35-917 shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the United States jail in said District for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration under oath required or authorized by sections 35-901 to 35-917, shall be guilty of perjury. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761.)

**AMENDMENT**

The 1902 amendment inserted following the word "membership," the first time said word appears, the words "or for restoration to membership."

**§ 35-914 [5: 154]. Neglect to report—Effect—Injunction—Penalty for violating injunction.**

Any such association refusing or neglecting to make the report as provided in sections 35-901 to 35-917 shall be excluded from doing business within the District. The superintendent of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of sections 35-901 to 35-917, give notice in writing to the attorney for said District, who shall immediately commence an action against such association to enjoin the same from carrying on any business. An injunction against any such association may be granted on application by the commissioners of said District at the request of the said superintendent. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violation complained of shall have been corrected, nor until the costs of such action be paid by it (provided, the court shall find that such association was in default, as charged), whereupon the Superintendent of Insurance shall reinstate such association, and not until then shall such association be allowed again to do business in said District. Any

officer, agent, or person acting for any association or subordinate body thereof, within said District, while such association shall be so enjoined or prohibited from doing business pursuant to sections 35-901 to 35-917, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in said jail not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762.)

**CROSS REFERENCE**

Quo warranto proceedings to question right to corporate rights and franchises, § 16-1601 et seq.

**§ 35-915 [5: 155]. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.**

Any person who shall act within said District as an officer, agent, or otherwise, for any association which shall have failed, neglected, or refused to comply with, or shall have violated any of the provisions of sections 35-901 to 35-917, or shall have failed or neglected to procure from the said superintendent a proper certificate of authority to transact business as provided for in sections 35-901 to 35-917, shall be subject to the penalty provided in section 35-914 for the misdemeanor therein specified. To "transact business" or "doing business" under sections 35-901 to 35-917 means the writing of applications and the soliciting of new members so far as the penalty of sections 35-901 to 35-917 applies thereto. It shall not be unlawful for any organization under section 35-901 to continue the operation of its lodges or branches except in securing new members. (Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763.)

**§ 35-916 [5: 156]. This law not to apply to associations for profit.**

Nothing in sections 35-901 to 35-917 shall be construed to apply to any corporation, society, order, or association carrying on the business of life, health, casualty, or accident insurance for profit or gain, and it shall only apply to fraternal beneficial associations as defined by section 35-901, and nothing in sections 35-901 to 35-917 contained shall be construed to affect any grand or subordinate lodge or branch of any such fraternal beneficial societies, orders, or associations which limits its certificate holders to a particular religious denomination or to the employees of a particular town or city, designated firm, business house, or corporation, or department or branch of the United States government, nor the grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, nor the grand or any subordinate lodge of the Knights of Pythias, nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates



of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount one hundred dollars. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24.)

#### AMENDMENT

The act of 1928 added "nor the National Council or any subordinate council of the Junior Order United American Mechanics, nor the national council or any subordinate council of the Daughters of America, nor the supreme council of the Knights of Columbus or any subordinate council thereof."

§ 35-917 [5: 157]. This law not to apply to associations or individuals using name of previously existing corporation.

The provisions of sections 35-901 to 35-917 shall not extend to nor apply to any association or individual who shall, in the certificate filed with the recorder of deeds, use or specify a name or style the same as that of any previously existing incorporated fraternal beneficial association in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765.)

#### JUVENILE FRATERNAL ACT

§ 35-918 [5: 161]. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.

Any fraternal benefit society authorized to do business in the District of Columbia may provide in its laws, in addition to other benefits provided for therein, for insurance and/or annuities upon the lives of children, at any age, upon the application of some adult person, as the laws of such society may provide. Any such society may, at its option, organize and operate branches for such children, and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. (May 29, 1928, 45 Stat. 953, ch. 862, § 2.)

#### COMPILER'S NOTES

Act May 29, 1928, 45 Stat. 953, ch. 862, § 1, provides: "That this act (§§ 35-918 to 35-921) shall be known as the Juvenile Fraternal Act."

Section 6 of that act provides: "All acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

§ 35-919 [5: 162]. Contributions—How computed.

Contributions to be made upon such certificates shall be based upon the Standard Industrial Mortality Table or the English Life Table Numbered 6, or the society may use a table based upon its own juvenile experience of at least ten years and covering not less than one hundred thousand lives with a rate of interest not greater than 4 per centum per annum, or upon a higher standard. (May 29, 1928, 45 Stat. 953, ch. 862, § 3.)

§ 35-920 [5: 163]. Reserves.

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the standard of mortality and interest adopted by the society for computing contributions as provided in section 35-919. (May 29, 1928, 45 Stat. 953, ch. 862, § 4.)

§ 35-921 [5: 164]. Enforcement of payment of contributions—Rules and regulations.

Any society shall have full power to provide for means of enforcing payment of contributions, designation of beneficiaries, and changing such designations, and in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith, not at variance with the provisions of sections 35-918 to 35-921. (May 29, 1928, 45 Stat. 953, ch. 862, § 5.)

#### SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

§ 35-922 [5: 165]. Separation of insurance and fraternal activities authorized.

Any corporation heretofore (April 12, 1930) organized by a special Act of Congress and vested with the powers, rights, and privileges of fraternal and benevolent corporations under the laws of the District of Columbia and engaged in carrying on fraternal activities and fraternal beneficial insurance activities in which are maintained reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum, is authorized and empowered, by a majority vote of its supreme legislative body and with the approval of the Superintendent of Insurance of the District of Columbia as hereinafter provided, to divide and separate such activities and continue the same as separate and distinct corporations in the manner set forth in sections 35-923 to 35-928. (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1.)

§ 35-923 [5: 166]. Certificate to be filed with Superintendent of Insurance—Contents.

A certificate under the seal of said corporation shall be filed in the office of the Superintendent of Insurance of the District of Columbia and which certificate shall set forth the facts as follows:

(a) That said corporation is organized under special Act of Congress giving appropriate reference thereto.

(b) That said corporation is engaged in carrying on fraternal activities and fraternal beneficial-insurance activities, with appropriate detailed information touching each of such activities, including the name of the corporation, its officers, numbers, and classes of membership, benefits carried, and other similar appropriate information.

(c) That the fraternal beneficial-insurance activities of said corporation maintain reserves not lower than the reserves required by the American Experience Table of Mortality with 3½ per centum interest per annum.

(d) That the supreme legislative body, at a regular or duly called special convention thereof, had, by a majority vote, authorized the division and separation of its activities and the amendment of its charter, under sections 35-922 to 35-928.

(e) That the name under which the fraternal activities of such corporation shall be carried on shall be "-----"

(f) That the name under which the insurance activities of such corporation shall be carried on shall be "-----"



(g) That until otherwise designated by its directors, its principal office shall be at -----.

(h) That until otherwise provided the number of its directors shall be nine, and that until their successors shall be elected the names of such directors shall be ----- (Apr. 12, 1930, 46 Stat. 158, ch. 135, § 2.)

**§ 35-924 [5: 167]. Approval and certificate of superintendent—Recordation.**

The Superintendent of Insurance of the District of Columbia shall examine such certificate, and if satisfied of the truth of the matters set forth in such certificate the Superintendent of Insurance may approve the same and may issue his certificates showing compliance herewith, which certificates shall be recorded in the office of the recorder of deeds for the District of Columbia, and such certificates when so issued shall be conclusive evidence that such corporation has complied with all of the requirements of sections 35-922 to 35-928 as conditions precedent to the separation and division of its activities as herein provided. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3.)

**CROSS REFERENCE**

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

**§ 35-925 [5: 168]. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.**

From and after the issuance of such certificates by the Superintendent of Insurance the fraternal activities and the fraternal beneficial insurance activities of such corporation shall be divided and separated; and

(a) All of the fraternal activities of said corporation shall continue unchanged under the name chosen therefor in such certificate, which may be the name of the original corporation or any other name chosen therefor, and in it shall remain vested, without the necessity for any further act or deed, all of the fraternal powers, activities, and functions, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such fraternal activities; and it shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected therewith.

(b) All of the insurance activities of said corporation shall continue, under the name chosen therefor in such certificate, as a mutual legal reserve life insurance corporation, and in it shall remain vested without the necessity for any further act or deed all of the fraternal beneficial insurance powers, activities, and functions thereof, as well as the title, ownership, possession, and control of all property, both real and personal, and all rights, claims, contracts, and privileges connected with and belonging to such insurance activities; it shall be absolved and relieved from any and all responsibility, obligations, and liabilities connected with the fraternal activities of the mother corporation, and shall be subject to and assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected

with and arising from such insurance activities; it shall have authority to make all and every insurance and reinsurance appertaining to or connected with life, accident, health, and disability risks of whatever kind or nature and to grant, purchase, or dispose of annuities and to furnish any aid or service to promote the health or safety of its members or their beneficiaries; such activities to be carried on and conducted for the mutual benefit of its members and their beneficiaries and not for profit, subject to the supervisions imposed by the law of the District of Columbia relating to mutual legal reserve life insurance corporations; that the number of directors shall be fixed by the by-laws and shall be at least nine, who shall be elected by the insured members; the terms of the directors shall be three years from the date of their election, and such directors may be classified so that their terms shall not all expire at the same time; the election shall be held annually, and such directors shall elect the president and other officers and shall have power to make and promulgate such by-laws, rules, and regulations as may be deemed necessary and proper for the elections herein provided and for the disposition and management of the business, funds, property, and effects of said corporation and shall be vested with the control and supervision of all of the business affairs of said corporation; and said corporation shall have all the powers, rights, and privileges on or after April 12, 1930 held and exercised by mutual legal reserve life insurance companies within the District of Columbia; in any action or suit by or against such corporation the policies, certificates, and other evidences of insurance obligation issued and executed by the mother corporation shall be admissible in evidence without further proof, and shall constitute prima facie evidence of the same obligations against said corporation as against such mother corporation. (Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4.)

**§ 35-926 [5: 169]. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.**

The proceedings in sections 35-922 to 35-928 provided, including the amendment of the charter, the issuance of the certificates by the Superintendent of Insurance, the division of assets and liabilities or any other act done under said sections, shall not be or constitute a dissolution of the original corporation, but the resulting corporation shall, so separated and divided, be continuations thereof and under the names as herein authorized, be separate legal entities, and the insurance corporation herein provided for shall be subject to supervision, regulation, and control as a mutual legal reserve life-insurance corporation. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5.)

**§ 35-927 [5: 170]. Contracts not impaired—Right of repeal and amendment reserved.**

Nothing contained in sections 35-922 to 35-928 and nothing done under said sections shall impair or operate to impair the obligations of any contract; and said sections and any certificate issued thereunder shall be subject to the power of Congress to alter, amend, or repeal at will. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6.)



§ 35-928 [5: 170a]. Insurance laws of States and District applicable.

Such corporation shall be subject to all the laws of the respective states, including the District of Columbia, with respect to similar mutual legal reserve life-insurance corporations. (Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7.)

## Chapter 10.—INDUSTRIAL LIFE INSURANCE

### Sec.

- 35-1001. Conditions of policies.
- 35-1002. Validity of policy—Good faith of insured material element—Unsound health as defense.
- 35-1003. Incontestability of policy.
- 35-1004. Assignment of policy.
- 35-1005. Beneficiary.

§ 35-1001 [5: 181a]. Conditions of policies.

Policies of industrial weekly payment life insurance after June 4, 1934, issued or delivered in the District of Columbia shall be subject to the following conditions, in addition to any others prescribed by law and not inconsistent with the provisions of this chapter. (June 4, 1934, 48 Stat. 834, ch. 373, § 1.)

### COMPILER'S NOTE

The act of June 19, 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life-insurance companies and the conduct of life-insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8 of this title), are hereby repealed."

§ 35-1002 [5: 181b]. Validity of policy—Good faith of insured material element—Unsound health as defense.

If payment of such a policy shall be refused because of unsound health at or prior to the date of the policy, the good faith of both applicant and insured shall constitute a material element in determining the validity of the policy; and it shall not be held invalid because of unsound health unless the insurer shall prove that, at or before the date of issue of the policy, the insured or applicant had knowledge of, or reason to know, the facts on which the defense is based, or shall prove that the insurance was procured by the insured or applicant in bad faith or with intent to defraud the company, any provision, agreement, condition, warranty, or clause contained in said policy, or endorsed thereon, or added or attached thereto, to the contrary notwithstanding. Proof by the insurer of fraud, intent to deceive, unsound health, bad faith, breach or (of) warranty or condition precedent, or other matter of defense, shall be subject to the provisions of section 35-203. (June 4, 1934, 48 Stat. 834, ch. 373, § 2.)

### CROSS REFERENCE

General provisions concerning formal requisites of insurance policies, § 35-703 et seq.

§ 35-1003 [5: 181c]. Incontestability of policy.

Every such policy shall be incontestable upon any ground relating to health after two years from its date of issue (notwithstanding a longer period may be named therein), provided the insured shall be alive at the end of said period. If the policy by its terms shall be incontestable after a shorter period than herein provided the terms of the policy with

regard to such period of limitation shall govern. (June 4, 1934, 48 Stat. 834, ch. 373, § 3.)

### CROSS REFERENCE

General provisions governing formal requisites of insurance policies, § 35-703 et seq.

§ 35-1004 [5: 181d]. Assignment of policy.

Nothing contained in the terms of any such policy shall operate to prevent its valid assignment by the insured; but the company issuing the policy so assigned shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice of such assignment. (June 4, 1934, 48 Stat. 835, ch. 373, § 4.)

§ 35-1005 [5: 181e]. Beneficiary.

Any individual designated with the consent of the insurer, evidenced by the signature of its president or secretary, or designated upon a form furnished by and filed with the insurer, as beneficiary of such a policy shall be entitled to the proceeds of such policy after the death of the insured in priority to all other claimants, and may sue in his own name for such proceeds if payment is refused by the insurer: *Provided*, That upon the expiration of fifteen days after the death of the insured, unless proof of claim in the manner and form required by the policy, accompanied by the policy for surrender, has theretofore been made by or on behalf of such designated beneficiary, the insurer may pay to any other claimant permitted by the policy. A person specified as one to whom the insured desires payment made, but not formally designated as beneficiary, shall be deemed a beneficiary for the purposes of this section, provided such designation be made in writing and filed with the company during the lifetime of the insured. (June 4, 1934, 48 Stat. 835, ch. 373, § 5.)

## Chapter 11.—MARINE INSURANCE

### Sec.

- 35-1101. Definitions.
- 35-1102. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.
- 35-1103. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.
- 35-1104. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.
- 35-1105. Foreign corporation—Requirements before doing business in District.
- 35-1106. Reinsurance.
- 35-1107. Unearned premium reserve.
- 35-1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.
- 35-1109. Statements for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.
- 35-1110. Taxation on earning on reserves for unpaid loss and unexpired insurance.
- 35-1111. Taxes on investment income from funds representing capital stock and surplus.
- 35-1112. Report to include all items necessary to enable superintendent of insurance to compute tax—Notification of amount of tax.
- 35-1113. Taxation in lieu of license fees.
- 35-1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.
- 35-1115. Penalty for failure to report or pay taxes.



## Sec.

- 35-1116. Syndicate "B" exempt from taxes and fees.
- 35-1117. Insurance companies not exempt from payment of Federal income tax.
- 35-1118. Investment of assets of domestic companies.
- 35-1119. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.
- 35-1120. Merger of companies.
- 35-1121. Establishment of foreign connections.
- 35-1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.
- 35-1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.
- 35-1124. Superintendent of Insurance may issue license to agent or broker to solicit marine insurance.
- 35-1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by superintendent to be confidential.
- 35-1126. Licensee to furnish bond.
- 35-1127. Keeping of classified records.
- 35-1128. Penalties.
- 35-1129. Production of incriminating evidence compellable—Immunity of witness.
- 35-1130. Clerical assistance and departmental expenses.
- 35-1131. Unconstitutionality of part of act not to affect the remainder.
- 35-1132. Right to amend or repeal reserved.
- 35-1133. Wagering policies, illegal.

## § 35-1101 [5: 184]. Definitions.

Whenever used in sections 35-1101 to 35-1132—

"Marine insurance" means insurance against any and all kinds of loss of or damage to vessels, craft, cars, aircraft, automobiles, and other vehicles, whether operated on or under water, land, or in the air, in any place or situation, and whether complete or in process of or awaiting construction; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, including money loaned on bottomry or respondentia, valuable papers, and all other kinds of property and interests therein, including liabilities and liens of every description, in respect to any and all risks and perils while in course of navigation, transit, travel, or transportation on or under any seas or other waters, on land or in the air or while in preparation for or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including builders' risks, war risks, and for loss of or damage to property or injury or death of any person, whether legal liability results therefrom or not, during, awaiting, or arising out of navigation, transit, travel, or transportation, or the construction or repair of vessels;

"Marine insurance company" means any persons, companies, or associations authorized by sections 35-1101 to 35-1132 to write marine insurance within the District;

"Insurance company" or "company" means any insurer, incorporated or otherwise;

"Domestic company" means an insurance company organized under the laws of the District of Columbia;

"District" means the District of Columbia;

"Superintendent" means the Superintendent of Insurance of the District of Columbia. (Mar. 4, 1922, 42 Stat. 401, ch. 93, title I, § 1.)

## COMPILER'S NOTES

Any provisions of this chapter in conflict with the "Act to provide for the regulation of the business of fire, marine, and casualty insurance, and for other purposes" (act of Oct. 9, 1940, 54 Stat. 1063, ch. 792), chapter 13 of this title, have been repealed. Section 46 of said act provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act, are hereby repealed."

This section may be partially superseded by § 35-1303.

## CROSS REFERENCES

Liability policy or bond for motor carriers, § 44-301.

Motor-vehicle liability policies, § 40-412.

Other definitions concerning fire, casualty, and marine insurance, § 35-1303, and notes.

Rates, schedules, and classification of workmen's compensation insurance, § 35-205.

Taxation, § 35-1108 et seq.

§ 35-1102 [5: 185]. Powers of Superintendent of Insurance and general insurance laws applicable to marine insurance companies.

Unless the context of any section under sections 35-1101 to 35-1132 expressly indicate otherwise, the laws of the District relating to the powers and duties of the superintendent, making of examinations, filing of financial and other statements, legal process, organization and licensing of companies, certification and supervision of agents, deposit of assets, impairment and liquidation proceedings, and other requirements pertaining to insurance in general, shall, in so far as they are made applicable by the terms of such laws, or by the terms of sections 35-1101 to 35-1132, apply to all marine insurance companies transacting business within the District: *Provided*, That, with respect to the filing of statements, the superintendent shall accept a photographic copy of a single original, or a certified copy from the insurance department of the state where the company is organized or has its principal office. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title I, § 2.)

## COMPILER'S NOTE

This section may be superseded by § 35-1304. See compiler's note to § 35-1101.

## CROSS REFERENCES

General provisions concerning insurance companies, see chapters 1 and 2 of this title.

Other provisions concerning powers and duties of the insurance department with respect to fire, casualty, and marine insurance, § 35-1304, and notes.

§ 35-1103 [5: 186]. Kinds of insurance that may be written—Capital stock and surplus requirements—Reinsurance companies—Companies excluded.

A marine, fire-marine, or fire insurance company may be formed, admitted, or licensed to write any or all insurance and reinsurance comprised in any one or more of the following numbered subdivisions:

First. On marine risks as described in section 35-1101 under the definition of "marine insurance."

Second. On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or flywheels), breakage or leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; and against liability of the insured for such loss or damage; and on auto-



mobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to person or property caused by his automobile.

Third. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including quarantine and identification.

Fourth. Against liability of the insured for the death or disability of another.

Fifth. Against loss of or damage to property resulting from causes other than fire, marine and inland navigation hazards, and against liability of the insured for such loss or damage, and on motor vehicles against fire, marine and inland navigation hazards, and against personal injury and death, and liability of the insured therefor, from explosions of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels or machinery, and to make and certify inspections thereof; and against loss of use and occupancy from any cause; against loss by burglary, theft, and forgery.

Sixth. Against loss or damage from failure of debtors to pay their obligations to the insured.

Seventh. Against loss from encumbrances on or defects in titles.

Eighth. Against loss or damage by theft, injury, sickness, or death of animals, and to furnish veterinary services.

Ninth. Against any loss or liability arising from any other casualty or hazard not contrary to public policy, other than that appertaining to or connected with (1) life insurance (including the granting of endowments and annuities), and (2) fidelity and surety bonding.

An insurance company organized for the transaction of one or more of the kinds of insurance permitted under subdivisions three to nine, inclusive, of this section, shall also, if complying with sections 35-1101 to 35-1132, be admitted or licensed to write any or all insurance and reinsurance comprised in any one or more of the other subdivisions of this section: *Provided*, That nothing in this section shall be construed as preventing any insurance company, formed, admitted, or licensed to transact insurance in the District on March 4, 1922, from continuing the writing of those kinds of insurance which it may have been authorized to write on March 4, 1922.

Every company formed, admitted, or licensed to transact in the District any of the kinds of insurance permitted by the several numbered subdivisions of this section shall maintain separate and distinct reserves for each kind of insurance so written, and if a stock company shall not transact the business of insurance in the District unless—

(a) It has a capital stock actually paid in, in cash or invested as provided by law, of at least \$100,000 for the insurance specified in any one subdivision of this section, nor unless it has a surplus of money or other lawful assets over its authorized capital and all other liabilities of at least \$50,000;

(b) With an additional \$50,000 of capital stock and \$25,000 of surplus for the insurance authorized by any other subdivision of this section and which may be transacted by such company;

(c) That every company writing more than one class of insurance, as authorized in the several subdivisions of this section, shall keep a separate account of all receipts in respect to each class of insurance, as directed by the superintendent, and the receipts in respect to each class of insurance shall be carried to and form a separate insurance fund with an appropriate name, which fund, exclusive of the capital stock and general surplus of the company, shall be as absolutely the security of the policyholders of that class as though it belonged to a company writing no other business than the insurance business of that class, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of insurance of that class, and shall not be applied, directly or indirectly, for any purposes other than those of the class of insurance to which the fund is applicable: *Provided*, That nothing in this subsection shall require the investments of any such fund to be kept separate from the investments of any other fund: *Provided further*, That nothing in this subsection shall be construed as preventing a company, at the end of each calendar year, from declaring dividends out of profits earned in any particular class of insurance, or from allocating such profits, either in part or in whole, to its general surplus: *And provided further*, That nothing in this section shall be applicable to companies operating in the District known as life, health, and accident companies under section 35-202.

Corporations for the sole purpose of reinsuring risks insured by other companies may be organized, or admitted, within the District in the same manner as prescribed for other companies. Such reinsurance companies may transact business with any other insurer or reinsurer, and such reinsurance may include all classes of insurance that may be lawfully written: *Provided*, That any reinsurance company, organized or admitted to reinsure one or more of the enumerated classes of insurance, shall be required to have an aggregate capital and surplus equal to the capital and surplus provided by this section for the direct writing of each class of insurance, and shall be required to hold reserves in the same amount and manner as required of other companies for each such class of insurance which, by the provisions of its charter, it is authorized to transact. Such reinsurance companies shall comply with sections 35-1101 to 35-1132, and with any other law of the District, regulating direct-writing companies, in so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 402, ch. 93, title 2, § 3.)

#### COMPILER'S NOTES

This section may be superseded by §§ 35-1314, 35-1316.

This section is probably superseded in so far as formation of health and accident insurance is concerned by the Life Insurance Act, see §§ 35-501, 35-712.

#### CROSS REFERENCES

Capital and surplus required of foreign and alien companies, § 35-1326.

Fire insurance companies may become perpetual, § 29-237.

Health and accident companies, § 35-202.

Other provisions concerning capital and surplus of fire, casualty, and marine insurance companies, § 35-1316.



Other provisions concerning kinds of insurance which may be written by fire, casualty, and marine insurance companies, § 35-1314.

Surplus required for operation under Lloyd's plan, § 35-1324.

Title insurance companies, § 26-301.

Title insurance excepted from operation of Fire, Casualty, and Marine Insurance Act, § 35-1302.

Wagering policies forbidden, § 35-1133.

**§ 35-1104 [5: 187]. Domestic mutual companies—Licensing, amount of advance premium required—Surplus.**

No domestic mutual company shall be organized or licensed within the District unless it has applications from at least two hundred persons for each class of insurance (as enumerated under the several subdivisions of section 35-1103) it may be authorized to write aggregating not less than \$500,000, the maximum amount of insurance applied for in any application on any risk not exceeding one-half of 1 per centum of the aggregate amount, nor three times the average amount of insurance applied for in the several applications. No such mutual company shall be so licensed for any of the classes of insurance as allowed under the several subdivisions of section 35-1103 unless it has received in cash, with respect to each such class of insurance written, at least one advanced periodical premium on each such application, aggregating at least \$10,000; but if the applications are for employers' liability or workmen's compensation insurance, the premiums on such applications shall aggregate at least \$25,000, and each employer shall be considered a separate risk; nor unless it has a surplus of \$10,000 in money or other lawful investments above its liabilities, including the liability equal to the aggregate amount of premiums so advanced. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 4.)

**COMPILER'S NOTE**

This section may be superseded by §§ 35-1305, 35-1316.

**CROSS REFERENCES**

Other provisions concerning capital and surplus requirements, § 35-1316.

Other provisions for licensing of fire, casualty, and marine insurance companies, § 35-1305.

Rates, schedules, classifications of workmen's compensation insurance, § 35-205.

**NOTES TO DECISIONS**

**AUTHORITY OF SUPERINTENDENT**

There is neither express nor implied authority in the Superintendent of Insurance of the District to amend, add to, or alter insurance law by regulations or to apply the drastic provisions of those rules solely to mutual companies. Without such authority, the limit of his power is to make rules consistent with the provisions of the law. *Hutchins Mut. Ins. Co. v. Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

**§ 35-1105 [5: 188]. Foreign corporation—Requirements before doing business in District.**

An insurance company organized under laws other than the laws of the District and desiring to transact business in the District shall satisfy the superintendent that it has, if a capital stock company, a paid-up capital and a surplus of assets, invested in accordance with the laws of the State under which it is organized, over its entire authorized capital and all other liabilities, at least equal to the capital and

surplus prescribed under section 35-1103 for the writing of various kinds of insurance; and, if a company without capital stock or an interinsurance exchange, that it has a surplus of assets, invested according to the laws of the State under which it is organized, over all its liabilities, of \$100,000; or if a mutual company other than a life insurance company that it has a surplus over liabilities amounting to \$100,000, or in lieu thereof a surplus amounting to \$10,000 and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force; or if a company organized under a foreign Government, Province, or State, that it has a surplus of assets invested according to the laws of the District or of the State in the United States where it has its deposit, held in the United States in trust for the benefit and security of all its policyholders in the United States, over all its liabilities in the United States, of at least \$150,000, and, if writing more than one class of insurance as enumerated and allowed under section 35-1103, an additional \$75,000 for each such additional kind of insurance written; and such company so organized under the laws of a foreign Government or State shall also either deposit with the superintendent securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance) and of the classes in which insurance companies are permitted by sections 35-1101 to 35-1132 to make investments, or with the official of a State of the United States, authorized by the law of such State to accept such deposit, securities of the amount and value of \$150,000 (or such larger amount as may be required by this section if the company writes more than one class of insurance), of the classes in which life insurance companies of such States are permitted to make their investments, and such deposits shall be made for the benefit and security of all the policyholders of such company in the United States, and the company shall file with the superintendent the certificate of such official of any such deposit with such official of any such State. (Mar. 4, 1922, 42 Stat. 404, ch. 93, title 2, § 5.)

**COMPILER'S NOTE**

This section may be superseded by §§ 35-1323 to 35-1326.

**CROSS REFERENCE**

Other provisions concerning admission of foreign and alien companies, §§ 35-1323 to 35-1327.

**§ 35-1106 [5: 189]. Reinsurance.**

Every insurance or reinsurance company, authorized to transact insurance or reinsurance within the District, may reinsure any part of an individual risk in another company having power to make such reinsurance, and with the consent of the superintendent may reinsure all of its risks, within any class of insurance as enumerated under the several subdivisions of section 35-1103, in another company. But no credit shall be taken for the reserve or unearned premium liability on such reinsurance unless the company accepting the reinsurance is licensed by the superintendent, or unless it is licensed in one or more States in the United States and shows the same standards of solvency as would be required if



it were at the time of such reinsurance authorized in the District to insure risks of the same kind as those reinsured.

In case such reinsurance is effected with an insurer so authorized, or so recognized for reinsurance in this District, the ceding insurer shall thereafter be charged on the gross premium basis with an unearned premium liability representing the proportion of each obligation retained by it, and the insurer to which the business is ceded shall be charged with an unearned premium liability representing the proportion of such obligation ceded to it calculated in the same way. The two parties to the transaction shall together carry the same reserve which the ceding insurer would have carried had it retained the risk.

The superintendent shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as he may direct. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 3, § 6.)

#### CROSS REFERENCE

Deducting reinsured risks in determining limitation of risks, § 35-1315.

#### § 35-1107 [5: 190]. Unearned premium reserve.

With respect to marine insurance risks, the unearned premium shall be found by computing 50 per centum of the amount of premiums received and receivable on unexpired risks on time policies running one year or less from date of policy, and 100 per centum of the amount of premiums on all untermi-nated voyage and transit risks. As a basis for unearned premium reserves, untermi-nated voyage or transit risks shall be deemed to expire within thirty days on the average. Every insurance company shall so compute such unearned premium in its annual and other financial statements. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 4, § 7.)

#### CROSS REFERENCE

Computation of reserves, § 35-1330.

#### § 35-1108 [5: 191]. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.

With the exception of license fees, real estate and personal property taxes, and a tax on investment income derived from funds representing reserves, capital stock and surplus as defined by sections 35-1101 to 35-1132, every insurance company organized, admitted, or licensed to transact business within the District shall, with respect to marine insurance written by it within the District, be taxed only on that proportion of the total underwriting profit of the company from marine insurance written within the United States which the net premiums of the company from marine insurance written within the District bear to the total net marine premiums of the company written within the United States. The term "underwriting profit," as used herein, shall be arrived at by deducting from the premiums earned on marine insurance contracts written within the United States during the calendar year (1) the losses incurred and (2) expenses incurred, including all taxes, in connection with such business.

Premiums earned on marine insurance contracts written during the calendar year shall be arrived at as follows:

(1) Gross premiums on marine insurance contracts written during the calendar year, less return premiums and premiums paid for reinsurance.

(2) Add unearned premiums on outstanding marine business at the end of the preceding calendar year.

(3) Deduct unearned premiums on outstanding marine business at the end of the current calendar year.

Losses incurred, as used herein, shall mean gross losses incurred during the calendar year under marine insurance contracts written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collected or collectible from any source applicable to aforesaid losses.

Expenses incurred shall include—

(1) Specific expenses incurred, consisting of all agency commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically for the purpose of doing a marine insurance business.

(2) General expenses incurred, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all Federal Government taxes, and all other expenses not chargeable specifically to a particular class of insurance which the net premiums received from marine insurance bear to the total net premiums received by the company from all classes of insurance written during the current calendar year. (Mar. 4, 1922, 42 Stat. 405, ch. 93, title 5, § 8.)

#### CROSS REFERENCES

Excepted from operation of general statutes for taxation of insurance companies, § 47-1806.

Syndicate "B" exempted from taxation, § 35-1116.

Taxation upon business written for unauthorized companies, § 35-1344.

#### § 35-1109 [5: 192]. Statements for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.

Every company transacting marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items pertaining to its insurance business as enumerated and prescribed in section 35-1108. To determine the basis of the tax on underwriting profit, every company which has been writing marine insurance for five years shall furnish the superintendent a statement of all of the aforementioned items, in the form prescribed by him, for each of the preceding five calendar years. A company which has not been writing marine insurance for five years shall furnish to the superintendent a statement of all of the aforementioned items for each of the calendar years during which it has written marine insurance.

If the superintendent finds the report of the company reporting correct, he shall, if the company has transacted marine insurance for five years, (1) ascertain the total average annual underwriting profit, as hereinbefore defined, derived by the company from its marine insurance business written within the



United States during the last preceding five calendar years, (2) ascertain the proportion which the average net annual premiums of the company from marine insurance written by it in the District during the last preceding five calendar years bear to the average total net marine premiums of the company during the same five years, (3) compute an amount of 5 per centum on this proportion of the aforementioned average annual underwriting profit of the company from marine insurance, and (4) charge the amount of tax thus computed to such company as a tax upon the marine insurance written by it in the District during the current calendar year. Thereafter the superintendent shall each year compute the tax, according to the method described in this section, upon the average annual underwriting profit of such company from marine insurance during the preceding five years, including the current calendar year; namely, at the expiration of each current calendar year, the profit or loss on the marine insurance business of that year is to be added or deducted, and the profit or loss upon the marine insurance business of the first calendar year of the preceding five-year period is to be dropped, so that the computation of underwriting profit for purposes of taxation under sections 35-1101 to 35-1132 will always be on a five-year average: *Provided, however,* That a company which has not been writing marine insurance in the District for five years shall, until it has transacted such business in the District for that number of years, be taxed on the basis of the annual average underwriting profit on marine insurance written within the United States during the preceding five years as averaged for all companies reporting to the superintendent for the current calendar year and which have been transacting marine insurance in the District for the past five years: *Provided further,* That, if at any time none of the companies reporting to the superintendent shall have written marine insurance in the District for five years, a company which has not been writing marine insurance in the District for five years shall be taxed on the basis of an annual average underwriting profit as averaged for all companies reporting to the superintendent for the number of years during which they have written marine insurance in the District, subject, however, to an adjustment in the tax as soon as the superintendent, in accordance with the provisions of this section, is enabled to compute the tax on the aforementioned five-year basis: *And provided further,* That in the case of mutual companies the superintendent shall not include in underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such companies on account of premiums previously paid by their policyholders.

When the superintendent has computed the tax on a company's underwriting profit, he shall forthwith mail to the last-known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the collector of taxes within thirty days after receipt of such notice from the superintendent, and no further tax, except the taxes on investment income from funds representing reserves, capital stock, and surplus as prescribed by sections 35-1110, 35-1111

and the license fee prescribed by section 35-1113 shall be imposed by the District upon such company, or the agents thereof, for the privilege of transacting the business of marine insurance in the District. (Mar. 4, 1922, 42 Stat. 406, ch. 93, title 5, § 9.)

#### CROSS REFERENCES

Excepted from operation of general tax laws, § 47-1906.  
Other provisions concerning annual statement, § 35-1311.

§ 35-1110 [5: 193]. Taxation on earning on reserves for unpaid loss and unexpired insurance.

In addition to the tax on underwriting profit as prescribed under sections 35-1108, 35-1109, every insurance company transacting business within the District shall, with respect to marine insurance written by it within the District, be taxed annually at the rate of 5 per centum on its average earnings on reserves for unpaid losses and unexpired premiums. The reserve for unpaid losses and unexpired premiums shall be arrived at by adding the unpaid loss and unexpired premium reserves on marine insurance risks, written within the District, at the beginning and end of the calendar year, and striking an average. Should any company not carry its unpaid loss and unexpired premium reserves separately for the District, then the tax provided under this section shall be applied to such proportion of the company's total unpaid loss and unexpired premium reserves as the net premiums of the company from marine insurance written within the District during the calendar year bear to the total net marine premiums of the company. Average earnings on reserves for unpaid losses and unexpired premiums shall be deemed, for the purpose of taxation under this section, to mean not more than 2 per centum of these reserves. (Mar. 4, 1922, 42 Stat. 407, ch. 93, title 5, § 10.)

#### CROSS REFERENCE

Excepted from operation of general tax laws, § 47-1806.

§ 35-1111 [5: 194]. Taxes on investment income from funds representing capital stock and surplus.

In addition to the taxes, as prescribed under sections 35-1108 to 35-1110, every company organized under the laws of the District and transacting marine insurance therein shall, with respect to marine insurance written in the District, pay a tax of 2 per centum on its investment income from funds representing capital stock and surplus as shown by the company's annual statement. Such investment income shall, for purposes of taxation under sections 35-1101 to 35-1132, be arrived at as follows: Add the gross assets at the beginning and end of the calendar year and strike an average. Add capital stock and surplus at the beginning and end of the year and strike an average. Ascertain the proportion which the average capital stock and surplus bears to average gross assets. Credit to investment income on capital stock and surplus such proportion of all income, except income taxed under section 35-1110, derived from interest, dividends, rents, and profits on sales or redemption of assets. Charge against investment income on capital stock and surplus such proportion of all losses on sales or redemption of assets.



Should a company subject to this tax be writing other classes of insurance, and the capital stock and surplus referred to herein relate to all the classes of insurance written without being specifically allocated to the several classes of insurance written, then such proportion of the investment income from funds representing capital stock and surplus, computed according to the method prescribed in the preceding paragraph of this section, shall be applicable to marine insurance for purposes of taxation under this section as the net premiums from marine insurance during the calendar year bear to the net premiums of the company from all the classes of insurance written. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 11.)

## CROSS REFERENCE

Excepted from operation of general tax laws, § 47-1806.

§ 35-1112 [5: 195]. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.

Every company writing marine insurance in the District shall set forth in its annual statement to the superintendent, and in the form prescribed by him, all the items necessary to compute the taxes as prescribed under sections 35-1110, 35-1111. If the superintendent finds the report of such company correct he shall compute the taxes as prescribed and charge the same to such company. Notification to companies by the superintendent of the amount of tax charged to them and the time and place of payment by the companies shall be the same as is required under section 35-1109, relating to taxation of underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 12.)

## CROSS REFERENCES

Excepted from operation of general tax laws, § 47-1806.

Other provisions concerning annual statements, § 35-1311.

§ 35-1113 [5: 196]. Taxation in lieu of license fees.

In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to \$100 if the assets of the company aggregate \$1,000,000 or under, to \$150 if the assets aggregate over \$1,000,000 and do not exceed \$5,000,000, and to \$200 if the assets exceed \$5,000,000. The manner and time of paying this single fee and its remittance to the collector of taxes shall be the same as prescribed under section 35-1109 for the payment of taxes on underwriting profit. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13.)

## CROSS REFERENCES

Excepted from operation of general tax laws, § 47-1806.

Refund of fees when license refused, § 47-1018.

§ 35-1114 [5: 197]. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.

If a company cease to do a marine insurance business in the District, it shall thereupon make report to the superintendent of the items pertaining to its marine insurance business, as enumerated and described by sections 35-1108 to 35-1113, to the date of its ceasing to do business and not theretofore reported, and forthwith pay to the superintendent the taxes and annual license fee thereon, computed

according to sections 35-1101 to 35-1132. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 14.)

## COMPILER'S NOTE

This section may be superseded by § 35-1307.

## CROSS REFERENCES

Excepted from operation of general tax laws, § 47-1806.

Payment of taxes upon ceasing business, § 35-1307.

§ 35-1115 [5: 198]. Penalty for failure to report or pay taxes.

If a company refuses to make any report for taxation or license fee purposes, or to pay taxes or license fees imposed upon it as required by sections 35-1101 to 35-1132, it shall be liable to the United States for the amount thereof and a penalty of not more than \$200 per month for each month it has failed after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of the District law relating to actions brought against insurance companies by policyholders thereof. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 15.)

## CROSS REFERENCE

Excepted from operation of general tax laws, § 47-1806.

§ 35-1116 [5: 199]. Syndicate "B" exempt from taxes and fees.

None of the taxes or fees prescribed under sections 35-1108 to 35-1113, shall be imposed upon business written within the District by "Syndicate B," a marine insurance syndicate created by agreement between the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation and a number of subscribing American marine insurance companies, under date of June 28, 1920, for the purpose of insuring all American steel steamships which the United States Shipping Board or United States Shipping Board Emergency Fleet Corporation may hereafter sell to others, to the full extent of the unpaid purchase price thereof, and also such other American steel steamships heretofore sold by said Shipping Board or by said corporation as are acceptable for insurance to the Syndicate B subscribers. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 16.)

## COMPILER'S NOTES

The United States Shipping Board was abolished and its functions transferred to the Department of Commerce by Executive Order No. 6166 of June 10, 1933. Act of June 29, 1936, 49 Stat. 1986, ch. 858, title II, § 202 (U. S. C., title 46, § 1112) later provided for the transfer of all property and interests formerly held by such board to the United States Maritime Commission.

The name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by act of February 11, 1927, 44 Stat. 1083, ch. 104, § 1 (U. S. C., title 46, § 810a). This corporation was dissolved by act of June 29, 1936, 49 Stat. 1987, ch. 858, title II, § 203 (U. S. C., title 46, § 1113) which provided that all its records and property should be taken over by the United States Maritime Commission.

§ 35-1117 [5: 200]. Insurance companies not exempt from payment of Federal income tax.

Nothing in sections 35-1101 to 35-1132 shall be construed so as to relieve any corporation organized or doing business under the provisions of sections 35-1101 to 35-1132 from the payment of taxes on its



income under the revenue laws of the United States. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 5, § 17.)

**§ 35-1118 [5: 201]. Investment of assets of domestic companies.**

The cash capital of every domestic corporation transacting marine insurance in the District, required to have a capital, to the extent of the minimum capital required by sections 35-1101 to 35-1132 shall be invested and kept invested in—

(1) Stocks or bonds of the United States, or of any state or of the District, or of any county, township, school, or other district or municipality in the United States, or federal farm-loan bonds, not estimated above their par value or their current market value.

(2) Bonds or notes secured by mortgages or deeds of trust of improved unencumbered real estate, or perpetual leases thereof, in the United States, worth not less than 50 per centum more than the amount loaned thereon. Where improvements on land constitute part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgagee in amount not less than the difference between two-thirds the value of the land and the amount of the loan.

(3) Mortgage bonds of railroad companies in the United States and on which default in payment of interest has not occurred within five years prior to the purchase by the company.

(4) Loans upon the pledge of such securities.

The cash capital of every insurance corporation not organized under the laws of the District and transacting marine insurance in the District to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the same classes of securities specified in the preceding paragraph of this section for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities specified in the preceding paragraph of this section; or in the stocks, bonds, or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States, or of any state thereof, or of the District; or in such real estate as it is authorized by sections 35-1101 to 35-1132 to hold.

The assets of every domestic mutual insurance corporation transacting marine insurance in the District to the extent of an amount equal to the minimum capital required of a like domestic stock corporation shall be invested and kept invested in the same class of securities specified for the investment of the minimum capital of like domestic stock insurance corporations. The residue of the assets of every domestic mutual insurance corporation, over and above said amount, may be invested in or loaned on the pledge of the same classes of securities or property as specified in sections 35-1118, 35-1119 for the investment or loan of the residue of the capital and

the surplus money and funds of like domestic stock insurance corporations.

A company doing business in a foreign country may invest the funds required to meet its obligations in such country in conformity to the laws thereof in the same kinds of securities in such foreign country as such company is allowed by law to invest in the United States.

Nothing in sections 35-1101 to 35-1132 shall prohibit a company from accepting in good faith, in order to prevent losses and to protect its interests, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Mar. 4, 1922, 42 Stat. 409, ch. 93, title 6, § 18.)

**COMPILER'S NOTE**

This section may be superseded by § 35-1321.

**CROSS REFERENCES**

Investments of insurance companies, § 35-202 and notes. Other provisions concerning investments for marine companies, § 35-1321.

**§ 35-1119 [5: 202]. Domestic company may acquire, hold, and convey real estate for certain purposes—Disposition.**

A domestic company may acquire, hold, and convey real estate only for the purpose and in the manner following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for branch office or other business facilities necessary for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.

(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in subdivisions (3), (4), (5), and (6) of this section which shall not be necessary for its accommodation in the convenient transaction of its business shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the superintendent shall direct in such certificate. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 6, § 19.)

**COMPILER'S NOTE**

This section may be superseded by § 35-1319.

**CROSS REFERENCES**

Conveyance of real estate, formal requisites, § 45-302. Other provisions concerning holding real estate, § 35-1319.



**§ 35-1120 [5: 203]. Merger of companies.**

Any two or more corporations organized under the laws of the District, and transacting the business of marine insurance, may merge or consolidate into one corporation under the name of any title approved by the superintendent, but no mutual corporation or company shall be merged with a stock corporation or company. The corporations may enter into and make an agreement for such merger or consolidation, prescribing its terms and conditions, the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations, and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place, and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post-office address, and also published at least once a week for four weeks successively in some newspaper printed in the District. Every such agreement must have the approval of the superintendent before the details of said agreement may be carried into effect as provided therein.

The new corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholder may be entitled to receive. Upon such merger or consolidation all rights and property of the several companies shall become the property of the corporation composed of such companies, and the new corporation shall succeed to all the obligations and liabilities of the old corporations in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporations shall continue subject to all the liabilities, claims, and demands existing against them at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation, in which any or all of the old corporations may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. (Mar. 4, 1922, 42 Stat. 410, ch. 93, title 7, § 20.)

**§ 35-1121 [5: 204]. Establishment of foreign connections.**

Any domestic company authorized to write insurance or reinsurance within the District may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe and may omit from its annual report the trans-

actions by any such agency, if beyond the North American Continent, for six months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report. If such company is required by the foreign nation within which it transacts business to make a deposit in the securities of its own Government, or otherwise, the excess of such deposit over the local reserve liability, computed according to the terms of sections 35-1101 to 35-1132, shall be allowed as an asset in the company's home statement. The company shall also be allowed to include in its admitted assets all agents' balances in foreign countries which are collectible and which are not more than one hundred and eighty days past due. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 21.)

**§ 35-1122 [5: 205]. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.**

Corporations engaged exclusively in the writing of insurance in foreign countries may be organized within the District in the same manner and under the same conditions as prescribed by sections 35-1101 to 35-1132 for companies writing risks within the United States. The capital stock of such insurance corporations may be owned by American corporations engaged in the same kind of insurance, and the holding companies shall be given credit for the stock thus owned as admitted assets when rendering their financial statements to the superintendent. Any corporation organized under this section shall pay taxes and fees as provided under sections 35-1108 to 35-1117 and shall comply with and receive the benefit of sections 35-1101 to 35-1132 so far as the same may be applicable. (Mar. 4, 1922, 42 Stat. 411, ch. 93, title 8, § 22.)

**§ 35-1123 [5: 206]. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.**

Any insurance agent or broker, incorporated or unincorporated, or any other person, partnership, or corporation, who or which, with or without compensation, shall, in or from the District, act for or with, or aid, in any manner, either directly or indirectly, any other person, association, partnership, or corporation in soliciting, procuring, or transacting marine insurance with or from any corporation, partnership, association, Lloyd's, individual underwriters, or reinsurers not authorized by license of the superintendent to transact the business of insurance therein, and whether the subject-matter of the insurance or reinsurance is or may be within or without the District, except as provided in sections 35-1124 to 35-1126, shall be guilty of a misdemeanor and shall forfeit to the District the sum of not less than \$100 nor more than \$1,000 for each offense: *Provided*, That for the purposes of sections 35-1123 to 35-1126 any office outside of the United States of an insurer organized under the laws of any foreign country, whether said insurer be licensed to do business in the United States or not, shall be deemed and held to be an insurer not authorized to transact the business of insurance in the District. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 23.)



## COMPILER'S NOTE

Sections 35-1123 to 35-1126 may be superseded by §§ 35-1334 to 35-1345.

## CROSS REFERENCES

Other provisions concerning agents for marine insurance, §§ 35-1334 to 35-1345.

Representation of unauthorized companies prohibited except in certain cases, §§ 35-1341, 35-1343, 35-1344.

§ 35-1124 [5: 207]. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.

The superintendent, in consideration of the yearly payment of \$100, shall issue to any person or corporation who is trustworthy and is competent to transact a marine insurance business in such manner as to safeguard the interests of the insured and who maintains in this District a regular office for the transaction of an insurance brokerage business a license, revocable for cause by the superintendent, permitting the party named in such license to act within the District as agent for the assured or broker to solicit or negotiate or place contracts of marine insurance with corporations, partnerships, associations, Lloyd's, individual underwriters, and interinsurers, which are not authorized to transact the business of insurance in this District, and shall renew the same annually, unless revoked for cause: *Provided*, That with respect to insurers organized under the laws of any foreign country and duly licensed to transact the business of insurance in any State or Territory of the United States and with respect to insurers organized under the laws of any State or Territory of the United States, said license shall not issue unless the superintendent shall be satisfied that said insurers show within the United States the same standards of solvency as would be required if said insurers were licensed at the time of issue of said license to transact the business of marine insurance in the District. Said license shall provide and the licensee thereunder shall agree that it may be revoked by the superintendent in his discretion in the event that said licensee does not comply with the terms and conditions of said license and of this chapter: *Provided*, That if a branch, associate, agent, correspondent, or head office of any broker so licensed by the superintendent, or such broker, shall, outside of this District, do or perform any of the acts or things forbidden to an unlicensed broker in this District the superintendent may, in his discretion, cancel and revoke the license of such licensee: *Provided*, however, That nothing herein contained shall authorize any person or corporation so licensed to act as insurer or guarantee the performance of any agreement, instrument, or policy of insurance or reinsurance as aforesaid or countersign or issue in the District any agreement, policy, or other instrument of such insurance unless such person or corporation so licensed shall have complied with the provisions of sections 35-1101 to 35-1132. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 24.)

## CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Insurance agents generally, § 35-1201 and notes.

Other provisions regulating agents for marine insurance, §§ 35-1334, 35-1345.

Refund of fees when license refused, § 47-1018.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, § 33-418.

Revocation of licenses generally, see notes to § 35-102.

§ 35-1125 [5: 208]. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.

Any person or corporation holding such license from the superintendent who shall do or perform any or all of the aforesaid acts in connection with marine insurance with any corporation, person, partnership, association, Lloyd's, individual underwriters, or interinsurers, which are not authorized by license of the superintendent to transact such business in the District, shall (1) maintain in good faith an office in the District, (2) keep in said office a complete book of record of the marine insurance transacted by, through, or with his or its assistance with unauthorized insurers, showing (a) a brief description or identification of the subject-matter and kind of the insurance, (b) the voyage insured, or, if for time, the date of such insurance going into effect and the date of its termination, (c) the name of the beneficial insured, (d) the amount insured with unauthorized insurers, (e) the rate of premium, (f) the gross premium payable therefor. Such book of record shall also contain statements in the same details of all such insurances canceled or on which premiums have been increased or reduced (including laying-up returns) and the amounts of additional or of return premiums thereon; (3) keep in said office such additional record of the insurance, including the names of the corporations, partnerships, associations, persons, Lloyd's, underwriters, or interinsurers and the amount insured by each. The books of record and all supplementing records shall be open at all times to the inspection of and examination by the superintendent of insurance or anyone appointed by him for said purpose. The data as herein outlined shall be furnished to the superintendent within one month following his request therefor and upon the form furnished by him. Such classified records of any licensee reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to any person or corporation not legally authorized to receive the same shall be guilty of a misdemeanor and subject, upon conviction, to a fine of \$2,000 or imprisonment for one year, or to both such fine and imprisonment. Any licensee under sections 35-1123 to 35-1126 failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month he has failed. (Mar. 4, 1922, 42 Stat. 412, ch. 93, title 9, § 25.)

## CROSS REFERENCE

See notes to §§ 35-101, 35-1123, 35-1124.



**§ 35-1126 [5: 209]. Licensee to furnish bond.**

Each person or corporation to whom such a license as broker shall be issued shall, before transacting business thereunder, execute and deliver to the superintendent a bond in the penal sum of not less than \$5,000, with such surety or sureties as the superintendent shall require and approve, conditioned that the said broker will faithfully comply with all the requirements of sections 35-1123 to 35-1126. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 9, § 26.)

**CROSS REFERENCE**

See notes to §§ 35-1123, 35-1124.

**§ 35-1127 [5: 210]. Keeping of classified records.**

Every insurance company organized or admitted to write marine insurance within the District shall keep a classified record of all its marine insurance transactions in the United States, setting forth for each calendar year the volume of risks and the premiums involved with respect to (1) hull and time freight insurance; (2) cargo and voyage freight insurance and other voyage interests; (3) builders' risk insurance; (4) reinsurance ceded to American companies; (5) reinsurance ceded to American branch offices of alien admitted companies; (6) reinsurance ceded to any foreign office of alien admitted companies and reinsurance ceded to nonadmitted alien insurers; (7) reinsurance received from American companies; (8) reinsurance received from any foreign office of admitted alien companies and reinsurance received from alien nonadmitted insurers. The data as herein outlined shall be furnished to the superintendent within two months following his request therefor and upon the form furnished by him. Such classified records of any individual company reporting shall be regarded by the superintendent as intended solely for the information of the District and federal governments, and shall not be revealed to any person not authorized by law to receive the same. Any person or persons in position to acquire the aforesaid information who shall, either while in office or after leaving office, reveal such information to a competitor shall be guilty of a misdemeanor and subject upon conviction to a fine of \$2,000, or imprisonment for one year, or to both such fine and imprisonment. Any company or admitted branch office failing to report such classified records within the time limit prescribed by this section shall forfeit to the District \$200 per month for each month it has failed. (Mar. 4, 1922, 42 Stat. 413, ch. 93, title 10, § 27.)

**§ 35-1128 [5: 211]. Penalties.**

Any person, corporation, association, or partnership who violates any of the provisions of sections 35-1101 to 35-1132, or fails to comply with any duty imposed upon him or it by any provision of said sections for which violation or failure no penalty is elsewhere provided by said sections or by the laws of the District, shall upon conviction thereof be fined not exceeding \$500. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 28.)

**§ 35-1129 [5: 212]. Production of incriminating evidence compellable—Immunity of witness.**

No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court or magistrate upon any investigation, proceeding, or trial for a violation of any of the provisions of sections 35-1101 to 35-1132 upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced by him shall be used against him upon any criminal investigation, proceeding, or trial. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 29.)

**COMPILER'S NOTE**

This section may be superseded by § 35-1346.

**CROSS REFERENCE**

Other provisions concerning testimony and the production of books and papers, § 35-1346.

**§ 35-1130 [5: 213]. Clerical assistance and departmental expenses.**

For the purpose of carrying out the provisions of sections 35-1101 to 35-1132 the superintendent of insurance is authorized to appoint, in addition to the present force, an examiner, a clerk-stenographer and to increase the contingent expenses of the insurance department in the sum of \$800. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 12, § 30.)

**COMPILER'S NOTES**

The law as enacted provided for a salary of \$3,000 per annum for the examiner and a salary of \$1,800 per annum for the clerk-stenographer.

The salary pay is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

**CROSS REFERENCE**

Receivership expenses, § 35-1308.

**§ 35-1131 [5: 214]. Unconstitutionality of part of act not to affect the remainder.**

Should any of sections 35-1101 to 35-1132 be held unconstitutional or invalid the constitutionality or validity of said sections as a whole or of any part thereof, other than the part so held unconstitutional or invalid, shall not be affected. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 31.)

**COMPILER'S NOTE**

This section as enacted also contains at the beginning the sentence "That this act shall supersede the provisions of any other law of the District in conflict therewith."

**§ 35-1132 [5: 215]. Right to amend or repeal reserved.**

The right to alter, amend, or repeal sections 35-1101 to 35-1132 is hereby reserved. (Mar. 4, 1922, 42 Stat. 414, ch. 93, title 13, § 32.)

**§ 35-1133 [5: 182]. Wagering policies, illegal.**

No insurance shall be made by any person or persons, bodies politic or corporate, on any ship or ships, or on any goods, merchandise, or effects laden or to be laden on board of any ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering



or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes. (Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 656.)

## Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

### Sec.

35-1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

35-1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

§ 35-1201 [5: 180]. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

No person, firm, or corporation shall act as agent for any insurance company or association, or act as insurance broker or agent for procuring or placing insurance for commissions, compensation, gain, or profit, without first having obtained a license as an insurance agent or broker from the Superintendent of Insurance of the District. Every such license certificate shall have printed conspicuously upon its face the words "General insurance license," and for such license the sum of fifty dollars shall be paid annually in the month of March to the collector of taxes of said District. All licenses for insurance companies, their agents, or solicitors, who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made and expire on the thirtieth day of April following, and payment shall be made in proportion. No person, firm, or corporation, or association shall allow or pay any commission, rebate, or compensation whatever, directly or indirectly, to, for, or in behalf of any person, firm, or corporation doing business in the District of Columbia not licensed as herein provided. Except as provided in section 35-1123, any violation of this section shall be a misdemeanor and, on conviction in the police court of said District, be subject to the penalties provided in section 35-201 for the misdemeanors therein described: *Provided*, That licenses to firms, corporations, or associations shall be held to extend only to the bona fide copartners, not exceeding two in one firm, and to the secretary and one assistant secretary of each corporation or association so licensed, any one of whom may be held and dealt with on behalf of such firm, corporation, or association for any violation of the provisions hereof. (Mar. 3, 1901, 31 Stat. 1292, ch. 854, § 654.)

### COMPILER'S NOTES

The words "Except as provided in section 35-1123" in the fifth sentence were inserted by the compilers.

As enacted this section contains at the end thereof "And provided further, That all moneys paid as fines under the provisions hereof shall be turned over to the proper custodian of the relief or pension fund of the fire department of the District, to be used and accounted for agreeably to the then existing rules for the use of such relief or pension fund." Act of Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12, provides that the "Police relief fund" and the "Fireman's relief fund" should be known as the "Policemen and firemen's relief fund, District of Columbia," and prescribes the moneys of which such fund shall consist (§ 4-503 in this code).

The act of 1934, 48 Stat. 1177, ch. 672, § 4, provided as follows: "All laws or parts of laws insofar as they relate to life insurance companies and the conduct of life insurance business, and in conflict with any provisions of this act (Life Insurance Act, chapters 3-8 of this title), are hereby repealed."

### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Fire, casualty, and marine insurance agents, §§ 35-1334 to 35-1345.

Life insurance agents, § 35-425 et seq.

Life insurance brokers, § 35-428.

Marine insurance agents, § 35-1124.

Refund of fees when license refused, § 47-1018.

Revocation and suspension of licenses, see notes to § 35-102.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33-418.

Transacting business for unauthorized company, § 35-1123.

See notes to § 35-101.

### NOTES TO DECISIONS

#### LICENSED AGENTS

Broker licensed under this section may act as agent for any company authorized to do business in the District. *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

An agent licensed to represent one company is entitled to apply for and receive another license to represent another company. *United States ex rel. Kreh v. Ingram* (38 App. D. C. 379).

#### LICENSED CORPORATIONS

"All insurance companies are compelled to comply with the provisions of the several sections relating to them before they can carry on business. \* \* \* The companies are under no obligation to apply for licenses for their agents or brokers. They must apply for their own licenses." *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

#### INJUNCTION

Superintendent of Insurance of the District has no statutory authority to issue license to mutual insurance companies writing taxicab insurance, and injunction may be issued to restrain him from doing so. *Hutchins Mut. Ins. Co. v. Hazen* (70 App. D. C. 174, 105 Fed. (2d) 53).

#### MANDAMUS

The issuance of a license to represent another company may be compelled by mandamus. *United States ex rel. Kreh v. Ingram* (38 App. D. C. 379).

#### REGULATIONS

Superintendent of Insurance does not have power "to make regulations for the classification of persons required to take out a 'general insurance license' by the provisions of 1901 Code, § 654 (§ 35-1201)." *Drake v. United States ex rel. Bates* (30 App. D. C. 312).

§ 35-1202 [5: 181]. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

Nothing contained in sections 35-101 to 35-108, 35-201 to 35-205, 35-1201, 35-1202 shall be held to interfere with or abridge the rights of, or apply to, any fraternal beneficial societies, orders, or associations under sections 35-901 to 35-917: *Provided*, That any insurance company or agent licensed to do business in the District of Columbia may employ solicitors, and the license fee to be paid for each solicitor so employed shall be five dollars per year, payable in the month of March, and such license shall have printed on its face the words "Insurance solicitor's license," and shall contain the name of



the company for which such solicitor is employed, and no other: *Provided*, That nothing herein contained shall be held to prevent any life or fire insurance company from carrying on the business commonly known as industrial insurance, and the license fee to be paid for solicitors for such industrial insurance shall be two dollars for every such solicitor, to be paid in the month of March in each year. Such license certificate shall have conspicuously printed on its face "Industrial insurance license," and shall also express upon its face the name of the company for which such solicitor is employed; and any certificate of license granted under this section or the next preceding section may be assigned, upon application to the Superintendent of Insurance, by canceling the old certificate and issuing a new one of like tenor to the assignee for the unexpired term, for which assignment a fee of twenty-five cents shall be paid to the collector of taxes; and any person who shall act as solicitor for any such insurance company, without having first procured such license therefor, or shall solicit for any company other than the one named in such license, shall be guilty of a misdemeanor and, on conviction thereof in the police court of said District, be punished by a fine of not less than ten dollars nor more than fifty dollars, and in default of payment of such fine by imprisonment in the jail of said District for a term of not less than ten days nor more than thirty days, at the discretion of the court: *Provided*, That nothing in sections 35-101 to 35-108, 35-201 to 35-205, 35-1133, 35-1201, 35-1202 shall be held to prevent any life insurance company organized in the District of Columbia under special act of Congress, but which has discontinued writing new insurance, from collecting premiums or dues upon any undetermined policies under which such company has liabilities, provided such company has sufficient assets and reserves to safely meet such liabilities. (Mar. 3, 1901, 31 Stat. 1293, ch. 854, § 655.)

## CROSS REFERENCE

See notes to § 35-1201.

### Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

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| <p>Sec.<br/>35-1301. Short title.<br/>35-1302. Application of act—Life, title, fidelity, and surety companies and pension plans excepted.<br/>35-1303. Definitions.<br/>35-1304. Records of insurance department—Power to make rules.<br/>35-1305. Certificate of authority—Necessity for—Expiration—Requirements.<br/>35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.<br/>35-1307. Taxes, report and payment upon ceasing business—Penalties.<br/>35-1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.<br/>35-1309. "Insolvency" defined.<br/>35-1310. "Impairment of capital or surplus" defined.<br/>35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.<br/>35-1312. False statements—Penalties.</p> | <p>Sec.<br/>35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.<br/>35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.<br/>35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.<br/>35-1316. Capital and surplus, minimum requirements.<br/>35-1317. Existing companies, application of act—Capital and surplus requirements.<br/>35-1318. Formation of domestic companies—Filing articles of incorporation, bylaws, charter and policy forms—Issuance of certificate of authority to do business.<br/>35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within five years after acquisition—Extension of time for sale.<br/>35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.<br/>35-1321. Investments permitted, domestic companies—Real estate, insurance or improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.<br/>35-1322. Agency contracts, exclusive—Approval of superintendent required—Prohibited provisions.<br/>35-1323. Foreign or alien companies, admission—Certificate of authority required.<br/>35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.<br/>35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.<br/>35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by superintendent.<br/>35-1327. Process, service upon foreign or alien companies by service on superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.<br/>35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.<br/>35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.<br/>35-1330. Reserves, computation.<br/>35-1331. Policy forms filed with the superintendent—Power to disapprove.<br/>35-1332. Accident and health policies, required provisions.<br/>35-1333. Discriminations prohibited.<br/>35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.<br/>35-1335. Commissions to unlicensed persons prohibited.<br/>35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.<br/>35-1337. Effective dates of licenses and proration of fees.</p> |
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- Sec.
- 35-1338. Temporary transfer of licenses—Renewal.
- 35-1339. Renewal of licenses.
- 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.
- 35-1341. Unauthorized solicitation or representation.
- 35-1342. Exemption from license—Common carriers—Travel bureaus—Life, fraternal benefit, and ocean marine agents.
- 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.
- 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.
- 35-1345. License fees.
- 35-1346. Testimony—Production of books, no refusal because of self-incrimination—Exemption from punishment except for perjury.
- 35-1347. Penalties not otherwise prescribed.
- 35-1348. Appeal from superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.
- 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.
- 35-1350. Constitutionality.

### § 35-1301. Short title.

This chapter shall be known as the "Fire and Casualty Act." (Oct. 9, 1940, 54 Stat. 1063, ch. 792, § 1, ch. I.)

#### REPEAL

Section 46 of the act of Oct. 9, 1940, 54 Stat. 1083, ch. 792, part II, provided as follows: "All laws or parts of laws, insofar as they relate to business affected hereby and are in conflict with any provisions of this act (§§ 35-1301 to 35-1350), are hereby repealed."

#### CROSS REFERENCES

General provisions concerning insurance companies, see chapters 1 and 2 of this title.

Other provisions concerning marine insurance companies, see chapter 11 of this title.

### § 35-1302. Application of act—Life, title, fidelity, and surety companies and pension plans excepted.

All fire, marine, and casualty insurance companies now or hereafter incorporated or formed in the District, or authorized to do business in the District, all brokers and all agents and other representatives of such companies, shall, to the extent hereinafter provided, be subject to this chapter: *Provided*, That this chapter shall not affect the business of life and title insurance, and shall not affect the right or authority of any solvent company to make contracts of fidelity or surety, and shall not affect a plan under which any person provides pension benefits to his employees. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, § 2, ch. I.)

#### CROSS REFERENCES

Effect on existing companies, § 35-1317.

See notes to § 35-1301.

### § 35-1303. Definitions.

In this chapter, unless the context otherwise requires—

"District" means District of Columbia.

"Commissioners" means the commissioners of the District of Columbia.

"Superintendent" means the Superintendent of Insurance of the District of Columbia.

"Department" means the Department of Insurance of the District of Columbia.

"Company" means an insurance, surety, or indemnity company, and shall be deemed to include a corporation, company, partnership, association, individual, or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance, surety, or indemnity business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

"Authorized company" means a company which has authority from the Superintendent to do business in the District as provided under section 35-1305.

"Unauthorized company" means a company which does not have authority from the Superintendent to do business in the District as provided under section 35-1305.

"Domestic company" means a company incorporated or organized under the laws of the District.

"Foreign company" means a company incorporated or organized under the laws of any State of the United States.

"Alien company" means a company incorporated or organized under the laws of any country other than the United States.

"Reciprocal" includes interinsurance exchange.

"Person" includes individuals, corporations, associations, exchanges, and partnerships.

Personal pronouns include all genders; the singular includes the plural and the plural includes the singular.

"Policy" means an insurance policy or contract, including contracts of fidelity and surety, and includes any contract wherein one party called the "company," for a consideration, undertakes to pay money or its equivalent, or to do an act valuable to any other party upon the happening of the hazard or peril insured against whereby the party insured suffers loss or injury or is subjected to legal liability.

"Officer," when used to refer to officer of the company, includes an attorney-in-fact.

"Policy writing agent" means any person who is not a salaried employee of a company, and whose residence or principal place of business is located in the District, and who is authorized in writing by any company authorized to transact business in the District to countersign policies and to solicit, negotiate, or effect contracts of insurance, surety, or indemnity for such company in the District.

"Soliciting agent" means any person who is not a salaried employee of a company and whose residence or principal place of business is located in the District, and who is authorized by a company having authority to transact business in the District, or by a policy-writing agent, to solicit in the District contracts of insurance, surety, or indemnity in behalf of such company or agent.

"Broker" means any person who for a consideration acts or aids in any manner in the solicitation or negotiation on behalf of the assured of contracts of insurance, surety, or indemnity.

"Salaried company employee" means any person regularly employed by an authorized company, and who is paid a regular wage or salary to perform certain duties and functions authorized by such company. For the purposes of this chapter the



term "salaried company employee" shall not include employees engaged solely in office duties or in the inspection, rating, or classifying of risks or in the supervision of agents, or any employee not engaged in the solicitation or writing of policies, or officers of companies or associations engaged in the performance of their usual and customary executive duties.

"Surplus" means the excess of admitted assets over liabilities and capital in the case of a company with capital stock, and the excess of admitted assets over liabilities in the case of a company without capital stock.

"Liabilities" means all debts due or to become due, contingent or otherwise, of which the company has knowledge, and includes the reserves required by this chapter.

"Admitted assets" includes the investments authorized or permitted by this chapter, and in addition thereto only the following:

(1) Cash in a company's principal or branch offices or in possession of a company or in transit, and cash deposited with the officers of any state or subdivision thereof, or the Dominion of Canada, when such deposit is necessitated by the laws of such state or subdivision thereof, or by the laws of the Dominion of Canada.

(2) Cash deposited in sound banks and trust companies.

(3) The amount fairly estimated as recoverable on cash deposited in closed banks and trust companies.

(4) Bills and accounts receivable collateralized by securities of the kind in which the company is authorized to invest.

(5) Bills receivable not past due for risks taken by companies authorized to transact fire and marine business described in section 35-1313 that are not in excess of the unearned premiums thereon.

(6) Gross premiums or premium deposits in course of collection not more than ninety days past due, less commissions due thereon to agents.

(7) Amounts fairly estimated as recoverable from advances made on contracts under surety bonds.

(8) Amounts due from solvent insurance companies, bureaus, or company associations, and amounts fairly estimated as recoverable from insolvent insurance companies.

(9) The interest accrued during the twelve months immediately preceding on mortgage loans other than those upon which the company is proceeding for the enforcement of security.

(10) The rents accrued on the company's property during the twelve months immediately preceding.

(11) Interest due and accrued on bonds conforming to this chapter and not in default.

(12) Amounts due and accrued on dividends declared on shares of stock conforming to this chapter.

(13) Interest due and accrued on collateral loans which is not in excess of the value of the collateral over the amount loaned thereon.

(14) Interest due and accrued on deposits in sound banks and trust companies.

(15) Interest accrued on tax-anticipation warrants.

(16) Amounts due for tax refunds allowed but unpaid from the United States or any state. (Oct. 9, 1940, 54 Stat. 1064, ch. 792, § 3, ch. I.)

#### COMPILER'S NOTE

This section may partially supersede § 35-1101.

#### CROSS REFERENCES

Additional definition of "company," § 35-1343.

"Encumbrances on real estate" defined, § 35-1321.

"Impairment of capital or surplus" defined, § 35-1310.

"Insolvency" defined, § 35-1309.

Other definitions concerning marine insurance, § 35-1101.

#### § 35-1304. Records of Insurance Department—Power to make rules.

The office of the superintendent shall be a public office, and the records, books, and papers thereof on file therein shall be public records of the District, except as the superintendent for good reason may decide otherwise, or except as it may be provided otherwise herein.

The superintendent shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 1, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1102.

#### CROSS REFERENCES

Other provisions concerning power and duties of insurance department with respect to marine insurance, § 35-1102.

Other provisions concerning the insurance department, § 35-101 et seq.

Power of Superintendent to prescribe and alter forms for annual statements, § 35-1311.

Power to disapprove inequitable policy forms, § 35-1331.

Power to prescribe form of application of foreign and alien companies to do business in the District, § 35-1325.

Rules and regulations generally, § 35-102 and notes.

Rules and regulations governing liability policies or bonds for motor carriers, § 44-301.

#### § 35-1305. Certificate of authority—Necessity for—Expiration—Requirements.

It shall be the duty of the superintendent to issue a certificate of authority to a company when it shall have complied with the requirements of the laws of the District so as to be entitled to do business therein. The superintendent may, however, satisfy himself by such investigation as he may deem proper or necessary that such company is duly qualified under the laws of the District to transact business therein, and may refuse to issue or renew any such certificate to a company if the issuance or renewal of such certificate would adversely affect the public interest. In each case the certificate shall be issued under the seal of the superintendent authorizing and empowering the company to transact the kind or kinds of business specified in the certificate, and each such certificate shall be made to expire on the 30th day of April next succeeding the date of its issuance. No company shall transact any business in or from the District until it shall have received a certificate



of authority as authorized by this section, and no company shall transact any business not specified in such certificate of authority. No domestic mutual company shall transact any business in the District until it has bona fide applications for insurance covering not less than two hundred separate risks in not less than twenty policies to be issued to not less than twenty members, and has received the cash premium therefor, and has a surplus of not less than the amount provided under sections 35-1315, 35-1316. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 2, ch. II.)

#### COMPILER'S NOTE

This section may supersede, § 35-1104.

#### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

General penalties for violation of the insurance laws, § 35-1347.

Issuance of certificate, § 35-1318.

Other provisions for licensing health and accident business, § 35-201.

Other provisions for licensing marine insurance companies, § 35-1104.

#### § 35-1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

The superintendent shall have power to revoke or suspend the certificate of authority to transact business in the District of any company which has failed or refused to comply with any provision or requirement of this chapter, or which—

(a) Is impaired in capital or surplus;

(b) Is insolvent;

(c) Is in such a condition that its further transaction of business in the District would be hazardous to its policyholders or creditors in the District, or to the public;

(d) Has refused or neglected to pay a valid final judgment against such company within thirty days after such judgment shall have become final either by expiration without appeal within the time when such appeal might have been perfected, or by final affirmance on appeal;

(e) Has violated any law of the District or has in the District violated its charter or exceeded its corporate powers;

(f) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable inspection or examination of the superintendent, his deputies, or duly appointed examiners;

(g) Has an officer who has refused upon reasonable demand to be examined under oath touching its affairs;

(h) Fails to file with the superintendent a copy of an amendment to its charter or articles of association within thirty days after the effective date of such amendment;

(i) Has had its corporate existence dissolved or its certificate of authority revoked in the State in which it was organized; or

(j) Has had all its risks reinsured in their entirety in another company, without prior approval of the superintendent.

The superintendent shall not revoke or suspend the certificate of authority of any company until he

has given the company not less than thirty days' notice of the proposed revocation or suspension and of the grounds alleged therefor, and has afforded the company an opportunity for a full hearing: *Provided, however,* That if the superintendent shall find upon examination that the further transaction of business by the company would be hazardous to the public or to the policyholders or creditors of the company in the District, he may suspend such authority without giving notice as herein required. (Oct. 9, 1940, 54 Stat. 1066, ch. 792, § 3, ch. II.)

#### CROSS REFERENCES

Examination of companies, § 35-1313.

General penalties for violation of the insurance laws, § 35-1347.

Receivership proceedings, § 35-1308.

Revocation of licenses, certificates, and permits in general, § 35-102 and notes.

#### § 35-1307. Taxes, report and payment upon ceasing business—Penalties.

If a company shall cease to do business in the District, it shall thereupon make report to the superintendent of the taxable premiums collected which have not been reported prior to the date of the cessation of business, and shall forthwith pay to the collector of taxes of the District, through the superintendent, a tax thereon computed according to law. If a company fails or refuses to make such a report or to pay the tax imposed upon it as required by law, it shall be liable to the District for the amount of such taxes, plus a penalty of 8 per centum per month for each month or part thereof during which such taxes remain unpaid. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, § 4, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1114.

#### CROSS REFERENCES

Marine insurance excepted from operation of General Tax Laws, § 47-1806.

Other provisions concerning payment of taxes upon ceasing business, § 35-1114.

Taxation of insurance companies, §§ 35-1108 to 35-1117, 47-1806 et seq.

#### § 35-1308. Receivership—Grounds for—Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.

The superintendent may, through the corporation counsel of the District, apply to the District Court of the United States for the District for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

(a) Insolvent; or

(b) Has neglected or refused to observe a lawful order of the superintendent to make good any deficiency in its capital or surplus; or

(c) Has by contract of reinsurance or otherwise transferred or attempted to transfer substantially its entire property or business, or has entered into



any transaction, the effect of which is to merge substantially its entire property or business in the property or business of any other company, without having first obtained the written approval of the superintendent; or

(d) Is found after an examination by the superintendent to be in such condition that its further transaction of business would be hazardous to its policyholders; or

(e) Has violated its charter; or

(f) Is carrying on activities against public policy.

Upon such application, such court may, in its discretion, issue an injunction restraining such company from the transaction of its business or disposition of its property pending further order of the court. On the return of such rule to show cause, the court shall hear, try, and determine the issues forthwith, and shall either deny the application or direct the superintendent to take possession of the property and conduct the business of such company and retain such possession and conduct such business until on the application either of the superintendent, the corporation counsel representing him, or the company, it shall, after a like hearing, appear to the court that the ground for the order directing the superintendent to take possession has been removed, and that the company can properly resume the possession of its property, and the conduct of its business. If on the like application and rule to show cause, and after a hearing, the court shall order the liquidation of the business of such company, such liquidation shall be made by and under the direction of the superintendent, who may deal with the property and business of such company in his own name as superintendent, or in the name of the company, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts, and rights of action of such company as of the date of the order so directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds for the District shall impart the same notice that a deed, bill of sale, or other evidence of title duly filed or recorded by such company would have imparted. For the purpose of this section, the superintendent shall have power to appoint under his hand and official seal one or more special deputy superintendents, and to employ clerks and assistants as may by him be deemed necessary. The fair and reasonable compensation of such special deputies, clerks, and assistants, and all the expenses of taking possession of and conducting the business of any such company shall, subject to the approval of the court, be paid out of the funds or assets of such company. The court may require a corporate surety bond or bonds from the superintendent in such amount as it may deem necessary. (Oct. 9, 1940, 54 Stat. 1067, ch. 792, § 5, ch. II.)

#### CROSS REFERENCES

General provisions concerning expenses of regulating marine insurance companies, § 35-1130.

Revocation or suspension of certificate of authority, § 35-1306.

#### § 35-1309. "Insolvency" defined.

Any insurance company whose assets are not sufficient to reinsure its outstanding risks in a solvent insurance company shall be deemed insolvent, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, § 6, ch. II.)

#### CROSS REFERENCES

Definitions, § 35-1303 and notes.

Power of Superintendent to examine and determine solvency of health and accident companies, §§ 35-201, 35-202.

#### § 35-1310. "Impairment of capital or surplus" defined.

Any company whose capital has been reduced to an amount less than that required by this chapter, or whose surplus of admitted assets in excess of all liabilities is less than the amount required by this chapter, shall be deemed to be impaired in capital or surplus, and may be proceeded against as provided in this chapter. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, § 7, ch. II.)

#### CROSS REFERENCES

Provisions for Superintendent to examine and determine whether or not capital or surplus of health and accident companies is impaired, §§ 35-201, 35-202.

"Surplus" defined, other definitions, § 35-1303 and notes.

#### § 35-1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.

Every company doing business in the District shall file with the superintendent before March 1 in each year a financial statement for the year ending December 31 immediately preceding on forms furnished by the superintendent. The superintendent shall have authority to extend the time for filing such statement by any company for reasons which he shall deem good and sufficient. Such statement shall be verified by the oath of the president and secretary of the company, or, in their absence, by two other principal officers. The superintendent shall annually in the month of December furnish to each of the companies authorized to do business in the District blanks necessary for the filing of the statement herein required. Such blanks shall conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. The superintendent shall have power to make such modifications and additions in said blank forms of statement as he may deem desirable and necessary to ascertain the condition and affairs of the company. The superintendent shall also have power to require that at least once in the month of March in each year a summary of such annual statement shall be published by the company in a daily newspaper published in the District. (Oct. 9, 1940, 54 Stat. 1068, ch. 792, § 8, ch. II.)

#### CROSS REFERENCES

Annual statement for tax purposes, §§ 35-1109, 35-1112. Annual statement of companies operating upon Lloyd's plan, § 35-1324.

General power of Superintendent to make rules and regulations, § 35-1304 and notes.

Other provisions concerning annual statements, §§ 35-103, 47-1801 et seq.



Other provisions for annual statements by health and accident companies, § 35-202.

Provisions concerning taxation of health and accident companies, § 35-202.

Refund of taxes erroneously or unlawfully collected, § 47-1017 et seq.

Taxation of business transacted by unauthorized company, § 35-1344.

#### § 35-1312. False statements—Penalties.

Any director, officer, agent, or employee of any company who subscribes to, makes or concurs in making or publishing any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be fined not more than \$5,000 or imprisoned for not more than five years, or both. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 9, ch. II.)

#### CROSS REFERENCE

General penalties, § 35-1347.

§ 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

The superintendent may examine the books, papers, property, and affairs of any agent or company organized or doing business in the District, and of any company engaged in or professing to be engaged in organizing, promoting, or soliciting stock or capital contributions to or aiding in the formation of any company, or any company which holds the capital stock of another company for the purpose of controlling the management thereof as voting trustee or otherwise. The superintendent, his deputy, or any examiner designated by the superintendent, may examine under oath the officers and agents of such company, and all persons deemed to have material information regarding the company's property or business. Every such company, its officers, and agents shall produce at the home office of the company at the time designated by the superintendent its books of original entry, and all records and papers in its or their possession relating to its or their business or affairs. The officers and agents of such company shall facilitate such examination insofar as it is in their power to do so. The expense of such examination shall be paid by the company examined. Any officer, director, agent, or employee of any company who makes or causes to be made any false entry in any book, report, or statement of such company with intent to injure or defraud such company or any other company or person, or to deceive any officer of such company, or the superintendent, and any person who with like intent aids or abets any officer, director, agent, or employee in any violation of this chapter shall be fined not more than \$1,000, or shall be imprisoned for not more than five years, or both. The superintendent may, in lieu of such examination of a foreign or alien company, accept the report on the examination of such company made by the insurance department or other insurance supervising official in any other state or any government outside the United States. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 10, ch. II.)

#### CROSS REFERENCES

General penalties, § 35-1347.

General provisions for examination of insurance companies, § 35-108 and notes.

Other provisions for inspection and examination of insurance companies, §§ 35-108, 35-201, 35-202, 35-903.

Provisions giving superintendent right to examine health and accident companies to determine solvency, §§ 35-201, 35-202.

Revocation or suspension of certificate of authority for failure to comply with this section, § 35-1306.

§ 35-1314. Classification of insurance—Fire and marine—Casualty—Risks insurable—Fidelity and surety risks excepted.

Any company authorized to do business in the District may, when empowered by its charter, make all or any one or more of the kinds of insurance and reinsurance comprised in either or both of the following classes, subject to and in accordance with the provisions of this chapter:

(1) *Fire and marine*.—On houses, buildings, and all other kinds of property against loss, damage, or damages by fire, lightning, or storm; to insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers or water pipes; and to make all kinds of insurance against loss of or damage to goods, merchandise, or other property caused by fire, risks of transportation, or navigation, the action of the elements or adverse manifestations of nature, as well as all and every risk or peril to which the subject of insurance may be exposed, against which it is not contrary to public policy to insure, including every insurable interest therein or in the use thereof, or profit or income therefrom, or legal liability therefor, but not to include injury to the person nor loss caused by breach of trust.

(2) *Casualty*.—(a) Upon the health of persons, or against injury, disablement, or death of persons resulting from traveling or general accidents by land or water, and against liability of the assured for injuries to employees or other persons; (b) against liability of the assured for loss or destruction of or damage to property; (c) upon the lives of domestic animals; (d) against loss of or damage to glass and its appurtenances; (e) against loss of or damage to any property resulting from the explosion of or injury to any boiler, heater, unfired pressure vessel, pipes, or containers connected therewith, any engine, turbine, compressor, pump, or wheel or any apparatus generating, transmitting or using electricity, or any other machine or apparatus connected with or operated by any of the previously named boilers, vessels, or machines; and including the incidental power to make inspections of and to issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise; (f) against loss by burglary or theft, or both, and against loss of or damage to moneys and securities; (g) to guarantee and indemnify merchants, traders, and those engaged in business and giving credit, from loss and damage by reason of giving and extending credit to their customers and those dealing with them; (h) against loss or damage by water or other fluid or substance to any property resulting from the breakage or leakage of sprinklers or water-pipes; (i) to



insure against any other casualty risk which may lawfully be the subject of insurance, and which it is not contrary to public policy to insure: *Provided*, That this section shall not be construed as having any effect whatever upon the right or authority of any solvent company to make contracts of fidelity or surety. (Oct. 9, 1940, 54 Stat. 1069, ch. 792, § 11, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1103.

#### CROSS REFERENCES

Insurance under Employers' Compensation Act, § 35-205.

Liability policy or bond for motor carriers, § 44-301.

Motor vehicle liability policies, powers of department, form and requisites of policies, § 40-412.

Other provisions concerning kinds of insurance which may be written by marine insurance companies, § 35-1103.

Wagering policies prohibited, § 35-1133.

§ 35-1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.

No company other than a mutual or reciprocal company doing business in the District shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of the sum of its capital stock and surplus without the written prior consent of the superintendent. No mutual or reciprocal company shall expose itself to any loss on any one risk or hazard in the District to an amount exceeding ten per centum of its surplus without written prior consent of the superintendent. No portion of any such risk or hazard which shall have been reinsured in a company authorized to do business in the District shall be included in determining limitation of risk: *Provided*, That the provisions of this section shall not apply to the insurance of workmen's compensation, employers' liability, marine, or inland marine risks. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 12, ch. II.)

#### CROSS REFERENCES

Limitation of risk for companies operating on Lloyd's plan, § 35-1324.

Reinsurance of risks, § 35-1106.

§ 35-1316. Capital and surplus, minimum requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$150,000, and a surplus of not less than \$150,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$150,000, and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$200,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 13, ch. II.)

#### COMPILER'S NOTE

This section may supersede §§ 35-1103, 35-1104.

#### CROSS REFERENCES

Capital and surplus required of foreign and alien companies, § 35-1326.

Other provisions concerning amount of capital and surplus required of marine insurance companies, §§ 35-1103, 35-1104.

Other provisions concerning capital and surplus of health and accident companies, §§ 35-201, 35-202.

Surplus required for operation under Lloyd's plan, § 35-1324.

§ 35-1317. Existing companies, application of act—Capital and surplus requirements.

No company shall be exempt from the provisions of this chapter by reason of its having been incorporated in the District or elsewhere prior to the effective date of this chapter, except that, in the case of companies authorized in the District on the date of approval of this chapter, and continuously authorized thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this chapter, and provided also that in the case of such continuously authorized companies the provisions of section 35-1327 relating to the names of companies, and the provisions of section 35-1328 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, § 14, ch. II.)

#### CROSS REFERENCE

Other provisions concerning application of act, exemptions, § 35-1317.

§ 35-1318. Formation of domestic companies—Filing articles of incorporation, bylaws, charter and policy forms—Issuance of certificate of authority to do business.

Any domestic stock, mutual, or reciprocal company desiring to transact business in the District shall, after complying with the general laws of the District governing the formation of companies or corporations, file with the Superintendent copies of its articles or incorporation, by-laws, charter, proposed forms of policies, and such other information as may be necessary to manifest and explain the organization, objects, and purposes of the company, and to satisfy the Superintendent that such company has complied with the laws of the District regarding the formation of companies. Thereafter, upon application made to the Superintendent upon such forms as the Superintendent shall prescribe, the Superintendent, subject to the provisions of section 35-1305, shall issue to the company a certificate of authority to transact business in the District. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 15, ch. II.)

§ 35-1319. Real estate which may be held by domestic companies—Sale of certain real estate within 5 years after acquisition—Extension of time for sale.

A domestic company may acquire, hold, and convey real estate for the purpose and in the manner only following:

(1) The building in which it has its principal office and the land on which it stands.

(2) Such as shall be requisite for its convenient accommodation in the transaction of its business.

(3) Such as shall have been acquired for the accommodation of its business.



(4) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.

(5) Such as shall have been conveyed to it in satisfaction of debts, previously contracted, in the course of its dealings.

(6) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), and (6) of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold by the company and disposed of within five years after it shall have acquired the title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procure the certificate of the Superintendent that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the Superintendent shall direct in such certificate. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 16, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1119.

#### CROSS REFERENCE

Other provisions concerning holding real estate, § 35-1119.

**§ 35-1320. Borrowing money, mutual company may borrow to create surplus fund, comply with law, or defray expenses of organization—Approval of superintendent—Interest rate—Repayment—Obligation of company.**

A domestic mutual company may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization or to enable it to comply with any requirement of law or as a surplus fund upon agreement which shall first be submitted to and approved by the superintendent that such loan or advance with interest at a rate not exceeding six per centum per annum shall be repaid only with the approval of the superintendent whenever in his judgment the company shall be in possession of sufficient surplus in excess of a surplus equal to the amount required by this chapter. Any such loan or advance shall not form a part of the legal liabilities of the company, but until such loan or advance has been repaid all statements published by such company or filed with the superintendent shall show the amount thereof then remaining unpaid. (Oct. 9, 1940, 54 Stat. 1071, ch. 792, § 17, ch. II.)

**§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.**

A domestic company shall invest its funds only in—

(1) Bonds or other evidences of indebtedness of the United States, or of any State; or of the Dominion of Canada, or of any Province thereof.

(2) Bonds or other evidences of indebtedness of any county, city, town, village, school district, or

other municipal district within the United States or the Dominion of Canada which shall be a direct obligation of the county, city, town, village, or district issuing the same.

(3) Bonds or notes secured by mortgages or deeds of trust on unencumbered real estate or perpetual leases thereon in the United States or Dominion of Canada worth not less than fifty per centum more than the amount loaned thereon. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire for the benefit of the mortgage in an amount not less than the difference between two-thirds of the value of the land and the amount of the loan: *Provided*, That for the purposes of this section real estate shall not be deemed to be encumbered within the meaning of this section by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls, nor by reason of building restrictions or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

(4) Bonds or notes secured by mortgages insured by the Federal Housing Administrator and in debentures issued by the Federal Housing Administrator: *Provided*, That the restrictions in subparagraph (3) of this section in regard to the ratio of the loan to the value of the property shall not apply to such insured mortgages.

(5) Bonds or other evidences of indebtedness of the farm-loan banks authorized under the Federal Farm Loan Act or Acts amendatory thereof or supplementary thereto, and bonds or other evidences of indebtedness of national mortgage associations.

(6) Stock or bonds and other evidences of indebtedness of any solvent corporation of any State or Territory of the United States or of the District or of any Province of the Dominion of Canada, excepting stock in its own corporation: *Provided*, That no such investment shall be made in or loan made upon the security of any such stocks upon which dividends in cash during the period of five years next preceding such purchase in each fiscal year for said five years shall not have been paid, and upon which bonds any regular interest payment shall have been defaulted any time within five years prior to such purchase or loan.

(7) Loans upon the pledge of any of the securities aforesaid.

(8) A company doing business in a foreign country may invest the funds required to meet its obligations in such country and in conformity to the laws thereof in the same kind of securities in such foreign country that such company is allowed by law to invest in the United States.

(9) The bonds of the Home Owners' Loan Corporation, a corporation organized under and pursuant to the authority of sections 1461-1468 of title 12 of the Code of Laws of the United States of America.

No loan or investment shall be made by any such company, unless the same shall have been authorized by the board of directors or by a committee thereof



charged with the duty of supervising loans or investments.

No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property; but the disposition of its assets shall at all times be within the control of the company.

Nothing in this chapter shall prohibit a company from accepting in good faith, to protect its interest, securities or property, other than herein referred to, in payment of or to secure debts due or to become due the company. (Oct. 9, 1940, 54 Stat. 1072, ch. 792, § 18, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1118.

#### CROSS REFERENCES

Definitions, § 35-1303 and notes.

Other provisions concerning investments of health and accident companies, § 35-202.

Other provisions concerning investments of marine companies, § 35-1118.

#### § 35-1322. Agency contracts, exclusive—Approval of Superintendent required—Prohibited provisions.

No domestic company authorized to do an insurance business in the District shall have or make any contract with any person whereby such person is granted the exclusive right or privilege to solicit, procure, write, produce, or manage the entire insurance business of such company, or to collect premiums therefor, unless such contract is filed with and approved in writing by the Superintendent. The Superintendent shall not approve any such contract which—

(a) Subjects the company to excessive charges for expenses or commissions; or

(b) Gives to such person the right to manage any of the affairs of such company or the exclusive right to solicit, procure, write, or produce the entire insurance business for such company, or to collect the premiums therefor for such unreasonable period as may jeopardize the interests or security of the company's policyholders. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 19, ch. II.)

#### CROSS REFERENCE

Licensing of agents, §§ 35-1334 to 35-1345.

#### § 35-1323. Foreign or alien companies, admission—Certificate of authority required.

Upon complying with the provisions of this chapter, a foreign or alien company organized as a stock, mutual, or reciprocal company, or as a Lloyd's organization, but not otherwise, may be authorized by certificate of authority to transact in the District the kind or kinds of business which a domestic company similarly organized may be authorized to transact under this chapter. Such certificate of authority shall be issued as provided under section 35-1305. The issuance of a certificate of authority to a Lloyd's organization shall be subject to the provisions of section 35-1324. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 20, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1105.

#### CROSS REFERENCES

Definitions, § 35-1303 and notes.

Establishment of foreign branches, §§ 35-1121, 35-1122.

Other provisions for the admission of foreign and alien companies, § 35-1105.

#### § 35-1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.

Individuals and aggregations of individuals transacting an insurance business upon the plan known as Lloyd's whereby the individual underwriters become liable severally for specified proportions of the whole amount insured by a policy, heretofore organized under the laws of a State of the United States, or of a foreign government, may be authorized to transact business in the District, upon the following conditions:

1. They shall comply with and be subject to the same terms, conditions, and provisions as are imposed by this chapter upon foreign stock insurance companies, except as provided in the next succeeding paragraph and except that the maximum amount of insurance to be assumed by an individual underwriter upon any single risk for each kind of insurance shall not exceed 10 per centum of the value of the cash and securities deposited in trust by such underwriter, plus the share of admitted assets other than underwriter's deposits of such Lloyd's belonging to such underwriter, less the share of liabilities and reserves of such Lloyd's allocable to such underwriter, but in no event shall it exceed 10 per centum of the value of cash or securities deposited in trust by such underwriter;

2. They shall have and shall at all times maintain surpluses of not less than \$300,000 in the aggregate and shall at all times have on deposit with an insurance department of a State of the United States, or with a bank or trust company designated by such insurance department, for the benefit of all policyholders within the United States the sum of at least \$350,000 in cash or in securities such as are required for the investment of the assets of insurance companies authorized to do business in the District: *Provided*, That they shall not be required to establish or maintain such a deposit if they have on deposit in the hands of a bank or trust company in the United States as trustee cash deposits or securities issued by the United States worth not less than \$2,000,000 in the aggregate and held in trust for the benefit of all policyholders in the United States;

3. They shall file with the superintendent an authenticated copy of their powers of attorney and an authenticated copy of the trust agreement, or other agreement under which deposits made by underwriters are held:

4. They shall notify the superintendent forthwith of any amendments to their powers of attorney, deposit agreement, or other documents underlying their organization, by filing with the superintendent an authenticated copy of such document as amended.

5. They shall notify the superintendent forthwith of any change in their names or change of attorney



in-fact, or change of address of their attorney-in-fact;

6. In the case of an alien Lloyd's, their annual statement shall embrace only their condition and transactions in the United States, and may be verified by the oath of their resident manager or other person or persons having proper authority;

7. There shall be filed with the superintendent by the attorney-in-fact at the time of filing the annual statement, or more often if the superintendent requires, a statement verified by the appropriate official of such Lloyd's, setting forth—

(a) the names and addresses of all the underwriters of such Lloyd's;

(b) a description of the cash and securities deposited in trust by each underwriter;

(c) the maximum amount of insurance assumed by each underwriter upon any single risk or each kind of insurance;

(d) that the maximum amount of insurance assumed upon any single risk for each kind of insurance by any individual underwriter does not exceed the limitation provided for in paragraph one of this section. (Oct. 9, 1940, 54 Stat. 1073, ch. 792, § 20a, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1105.

#### CROSS REFERENCES

Capital and surplus requirements, general provisions, § 35-1316.

Limitation of risk, § 35-1315.

Other provisions concerning annual statements, § 35-1311 and notes.

Other provisions for the admission of foreign and alien companies, § 35-1105.

### § 35-1325. Certificate of authority, application by foreign or alien companies—Form and execution.

A foreign or alien company, in order to procure a certificate of authority to transact business in the District shall make application therefor to the superintendent on forms prescribed and furnished by the superintendent. Such forms shall be executed for the company, by its president or vice-president, or executive officer corresponding thereto, and verified by such officer, and if a corporation the corporate seal shall be thereto affixed, attested by its secretary or other proper officer. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, § 21, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1105.

#### CROSS REFERENCES

Other provisions for the admission of foreign and alien companies, § 35-1105.

Powers and duties of Superintendent, § 35-1304 and notes.

### § 35-1326. Application for certificate of authority, foreign or alien companies—Delivery of instruments concerning company to Superintendent—Service of process—Deceptive names prohibited—Capital and surplus—Investments—Examination by Superintendent.

A foreign or alien company shall deliver to the superintendent (a) application of the company for a certificate of authority; (b) a copy of its articles of incorporation or articles of association and amendments thereto, duly certified by the proper officer of

the state or country under whose laws the company is organized or incorporated, or if reciprocal, the power of attorney of the attorney-in-fact; (c) if an alien company, a copy of the appointment and authority of its United States manager, certified by a proper officer of the company; (d) a copy of its by-laws and regulations; (e) forms of contracts and policies it proposes to issue in the District, and forms of the applications therefor, if any; (f) the instrument authorizing service of process on the superintendent required by section 35-1327; (g) a statement of its financial condition and business as of the end of the preceding calendar year, complying as to form and verification with the requirements of this chapter for annual statements, or financial statement as of such later date as the superintendent may require; (h) a copy of the last report of examination, certified to by an insurance commissioner or other proper supervisory official; (i) a certificate from the proper official of the state or country wherein it is incorporated or organized, that it is duly incorporated or organized and is authorized to write the kind or kinds of insurance which it proposes to write in the District. Before a certificate of authority to transact business in the District is issued to a foreign or alien company, such company shall satisfy the superintendent that (a) the company is duly organized under the laws of the state or country under whose laws it professes to be organized and is authorized to do the business it is transacting or proposes to transact; (b) its name is not the same as, or so deceptively similar to, the name of any domestic company, or the name of any department of the federal government or existing corporation authorized to transact business in the District as to mislead the public or cause confusion; (c) if a stock company, it has a paid-up capital and surplus at least equal to the capital and surplus required by this chapter, or, if a mutual company or reciprocal, it has a surplus and provision for contingent liability of policyholders at least equal to the surplus and provision for contingent liability of policyholders required by this chapter; (d) its funds are invested in accordance with the laws of its domicile, and in securities or property which afford a degree of financial security substantially equal to that required for similar domestic companies. Before issuing a certificate of authority to a foreign or alien company, the superintendent may cause an examination to be made of the condition and affairs of such company. (Oct. 9, 1940, 54 Stat. 1074, ch. 792, § 22, ch. II.)

#### COMPILER'S NOTE

This section may supersede § 35-1105.

#### CROSS REFERENCES

Capital and surplus requirements, general provisions, § 35-1316.

Other provisions for admission of foreign and alien companies, § 35-1105.

### § 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

(a) *Service of process upon unauthorized company.*—(1) The issuance or delivery of a policy or



contract of insurance in this District, to a citizen or resident thereof, by a foreign or alien company transacting business in this District without a certificate of authority, shall be deemed equivalent to an appointment by such company of the superintendent and his successor or successors in office to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it, arising out of such policy or contract of insurance, and said issuance or delivery shall be a signification of its agreement that any such process against it which is so served shall be of the same legal force and validity as if served upon the company.

(2) Service of such process upon the superintendent, and the responsibility of the superintendent in regard thereto, shall be in accordance with the provisions for service of process upon authorized companies as provided in subsection (b).

(b) *Attorney for services of process.*—Every foreign or alien company now or hereafter authorized to transact business in the District shall file with the superintendent a duly executed instrument appointing and constituting him and his successors true and lawful attorney for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney as herein provided, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by delivering to and leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the company. The superintendent shall forthwith forward such process by prepaid registered mail to the company, or, in the case of an alien company, to the United States manager or last-appointed United States general agent of the company. The registry receipt evidencing the deposit by the superintendent, or his deputy, of such process, in the United States mails in the manner herein prescribed, shall be prima facie evidence of the completion of such service. Failure of any such company to file such an instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such company transacting business in the District without designating an attorney for service of process as herein provided shall, upon information filed by the corporation counsel of the District in the police court of the District, be fined upon conviction not less than \$10 nor more than \$500 for each day during which the company shall have operated in violation of this section. (Oct. 9, 1940, 54 Stat. 1075, ch. 792, § 23, ch. II.)

## CROSS REFERENCE

General penalties, § 35-1347.

### § 35-1328. Names of mutual or reciprocal companies—Requirements—Exceptions.

Except as otherwise provided in section 35-1317, no mutual company shall be authorized to transact business in the District unless the name of such company shall include the word "mutual," and no reciprocal or interinsurance exchange shall be authorized to transact business in the District unless the name or designation under which reciprocal or interinsurance contracts are to be exchanged shall include the words "reciprocal" or "interinsurance exchange," or be supplemented by the following words immediately below the name or designation under which such contracts are exchanged: "A reciprocal" or "an interinsurance exchange." (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 24, ch. II.)

### § 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35-1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$300,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 25, ch. II.)

### § 35-1330. Reserves, computation.

In determining the financial condition of companies authorized under this chapter, allowance shall be made for proper and adequate reserves for liabilities, including reserves for—

- (a) Unpaid losses and the expenses of the adjustment thereof;
- (b) Unearned premiums;
- (c) Commissions, taxes, and all other legal obligations, contingent or otherwise, of which the company has knowledge.

The computation of such reserves shall be in accordance with the provisions of the form of annual statement required under section 35-1311, and every authorized company shall maintain such reserves at all times. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 26, ch. II.)

## CROSS REFERENCE

Computation of unearned premium reserves, § 35-1107.

### § 35-1331. Policy forms filed with the superintendent—Power to disapprove.

The superintendent may require that all policy forms used by every authorized company covering risks in the District be filed with the superintendent. The superintendent shall have authority to disapprove the use in the District of any policy form which is inequitable, or does not comply with the requirements of the law of the District. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 27, ch. II.)

## CROSS REFERENCE

General powers of superintendent, § 35-1304 and notes.



**§ 35-1332. Accident and health policies, required provisions.**

The Superintendent may require that the provisions and conditions contained in any policy of insurance against loss or damage from sickness or bodily injury or death of the insured by accident issued by any company authorized by this chapter to transact business in the District be made to conform to the requirements prescribed under section 35-712. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, § 28, ch. II.)

**CROSS REFERENCES**

Benefits from health and accident insurance are not subject to claims of creditors, § 35-717.

Minors may contract for health and accident insurance, § 35-430.

**§ 35-1333. Discriminations prohibited.**

Discrimination between individual risks of the same class or hazard in the amount of premiums or rates charged for any policy, or in the benefits or amount of insurance payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited, and the superintendent is empowered after investigation to order removed at such time and in such manner as he shall specify any such discrimination which his investigation may reveal. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 29, ch. II.)

**§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.**

No company authorized to do business in the District shall, by its representatives or otherwise, make, write, issue, or deliver any contract of insurance, surety, or indemnity, except life, title, and ocean marine insurance, on any person, property, business activity, or insurable interest within the District except through regularly constituted policy writing agents or authorized salaried employees licensed in the District as provided in this chapter.

No such contract covering persons, property, business activities, or insurable interests in the District, except contracts of life, title, and ocean marine insurance, shall be written, issued, or delivered by any authorized company or by any of its representatives unless such contract is duly countersigned in writing by a person who is licensed as provided in this chapter to countersign such contracts, and no salaried officer, manager, or other salaried employee of any authorized company, unless he be licensed as provided in this chapter, shall write, issue, or countersign any such contract.

No company, agent, or salaried company employee shall make any agreement as to a policy other than that which is plainly expressed in the policy issued.

No company, agent, salaried company employee, or broker shall pay or offer to pay or allow as an inducement to any person to insure any rebate of premium or any special favor or advantage whatever in the dividends to accrue thereon, or any inducement whatever not specified in the policy.

Every company authorized by this chapter to do business in the District shall file annually with the

Superintendent on or before the 15th day of April, and at such other times as they may be appointed, a list of agents and salaried employees of said company who are authorized to solicit, write, effect, issue, or deliver policies for such company in the District, except that the names of soliciting agents may be filed either by the company or by the policy-writing agent.

Any policy-writing agent or salaried company employee authorized by any company to solicit, negotiate, bind, write, or issue policies or applications therefor shall, in any controversy between the insured or his representative and the said company, be held to be the agent of the company which issued or effected the policy solicited or so applied for, anything in the application or policy to the contrary notwithstanding.

Any payment made by or on behalf of the insured to any broker for policies issued to such broker for delivery to the insured or issued directly to the insured on the order of such broker, shall, in controversies between the insured and the company, be deemed to have been paid to the company.

No soliciting agent shall have any authority to countersign any policy. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 30, ch. II.)

**COMPILER'S NOTE**

Sections 35-1334 to 35-1345 may supersede §§ 35-1123 to 35-1126.

**CROSS REFERENCES**

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Definitions, § 35-1303 and notes.

Exclusive agency contracts must be approved by Superintendent, § 35-1322.

General provisions concerning agents, §§ 35-1201, 35-1202.

Other provisions concerning agents for marine insurance, §§ 35-1123 to 35-1126.

**§ 35-1335. Commissions to unlicensed persons prohibited.**

No company, policy-writing agent, soliciting agent, broker, or salaried employee shall pay any money or commission or brokerage or give or allow any valuable consideration to any person for or because of service in the District in negotiating or effecting a policy on any person, property, business activity, or insurable interest in the District, unless said person is duly licensed in conformity with this chapter as a broker or as an agent or salaried employee of the company issuing the policy. This section shall not apply to contracts of reinsurance, and shall not apply to persons and kinds of insurance exempted under section 35-1342. (Oct. 9, 1940, 54 Stat. 1077, ch. 792, § 31, ch. II.)

**CROSS REFERENCE**

See notes to § 35-1334.

**§ 35-1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.**

Any person hereafter desiring to engage in business in the District as a policy-writing agent, soliciting agent, broker, or salaried company employee, as



defined by this chapter, shall, before engaging in such business, secure from the Superintendent a license authorizing him to engage in such business. The person to whom the license may be issued shall file sworn answers to such interrogatories as the Superintendent may require on forms furnished by the Superintendent. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, or salaried company employee, he shall require the company or policy-writing agent desiring the appointment of such person to certify—

(a) That the person to be appointed, if not a salaried company employee, is a resident of this District, or that his principal office for the conduct of such business is in or will be maintained in the District;

(b) That he is personally known to the person making the certification;

(c) That he has had experience or instructions necessary to the proper conduct of the kind or kinds of business to which the license is to extend;

(d) That he has a good business reputation, is trustworthy, and is worthy of a license.

Resident and nonresident brokers shall, as a prerequisite to the issuance of a license, file with the Superintendent a corporate surety bond in an amount not less than \$5,000 for the benefit of any person who may suffer loss resulting from fraud or dishonesty on the part of said resident or nonresident broker. Before the Superintendent shall issue a license to any policy-writing agent, soliciting agent, salaried company employee, or resident broker, he shall personally, or through his deputy or any person regularly employed in the department, within a reasonable time, and in a designated place within the District, subject each such person to a personal written examination relating to such person's knowledge of the kind or kinds of business to which the license may extend and his competency to act as such policy-writing agent, soliciting agent, broker, or salaried company employee. The Superintendent may in his discretion limit the scope of such examination to such particular kind or kinds of business in which the person to be licensed is to be principally engaged. Following such examination the Superintendent shall issue such license as may be applied for when he is satisfied that the person to be licensed is (a) competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for, and that not more than 25 per centum of his commission income from business to which the license applies will result from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of section 35-1340; and (b) that he has a good business reputation and has had experience, training, or education, or is otherwise qualified in the line or lines of business in which the license would entitle him to engage, and, except in the case of a nonresident broker or salaried company employee, is a resident of the District, or maintains his principal office for the conduct of such business in the District; and (c) is reasonably familiar with the insurance laws of the District, and with the provisions, terms, and conditions of the policies he is proposing

to solicit, negotiate, or effect, and is worthy of a license. In the case of a nonresident applying for a broker's license, the Superintendent may waive the examination requirement and accept in lieu thereof evidence that the applicant holds a license as broker or agent in the State where his principal business is conducted. The Superintendent may also waive the examination requirement in the case of any person who has been licensed in the District prior to the effective date of this chapter. Licenses may be issued in the names of individuals, or in the names of firms, partnerships, or corporations, including banks, trust companies, real-estate offices, and building and loan associations: *Provided*, That on such licenses there shall be listed the name of every member or officer of such firm, partnership, or corporation who solicits insurance or who countersigns policies: *And provided further*, That such named persons shall be subject to all requirements of this chapter, and that no officer or employee of such organizations other than those specifically named in such license shall be required to comply with this section, unless the duties of such officers or employees include soliciting or the countersigning of policies. No person shall be licensed as agent, broker, or salaried company employee when it appears to the Superintendent that said license is sought primarily for the purpose of obtaining commissions on policies on which he on his own account pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member. (Oct. 9, 1940, 54 Stat. 1078, ch. 792, § 32, ch. II.)

#### CROSS REFERENCE

See notes to § 35-1334.

#### § 35-1337. Effective dates of licenses and proration of fees.

All licenses issued under this chapter shall date from the first of the month in which the application for license is made, and shall expire on the 30th day of April next succeeding, and payment of the fees for such licenses shall be prorated accordingly. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 33, ch. II.)

#### CROSS REFERENCES

License fees, § 35-1345.

See notes to § 35-1334.

#### § 35-1338. Temporary transfer of licenses—Renewal.

In the event of the death or disability of any person licensed as a policy-writing agent, soliciting agent, or salaried company employee, the Superintendent may transfer such license to another person without the payment of an additional fee, and may renew such license: *Provided, however*, That no person shall act as policy-writing agent, soliciting agent, or salaried company employee under any transferred license or renewal thereof for a period in excess of six consecutive months. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 34, ch. II.)

#### CROSS REFERENCE

See notes to § 35-1334.



## § 35-1339. Renewal of licenses.

Renewal of all expiring licenses shall be issued by the Superintendent upon application in writing by the applicant for any such license, subject to the conditions of section 35-1340, and subject also to the provisions for examination as set forth in section 35-1336, upon payment of the applicable fee prescribed in section 35-1345. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 35, ch. II.)

## CROSS REFERENCE

See notes to § 35-1334.

## § 35-1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.

The Superintendent may revoke, suspend, or refuse to renew the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears conclusively to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has—

(a) Violated any of the provisions of the insurance laws of the District; or

(b) Has failed within a reasonable time to remit to any company all moneys which he has collected, and to which the company is entitled; or

(c) Has been guilty of rebating or has misrepresented the provisions of the policies which he is selling, or the policies of other companies; or

(d) Has countersigned policies in blank; or that

(e) More than 25 per centum of his commission income from business to which the license applies results from policies the premiums on which are paid or are to be paid in the manner set forth in paragraph (f) of this section; or that

(f) Said license is being used primarily for the purpose of obtaining commissions on policies on which he, on his own account, pays or is to pay the premiums, or on which the premiums are paid or are to be paid by any person who receives or is to receive any benefit, direct or indirect, from the commissions obtained, or on which the premiums are paid or are to be paid by any partnership, association, or corporation of which he is a member.

Before the superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf. (Oct. 9, 1940, 54 Stat. 1079, ch. 792, § 36, ch. II.)

## CROSS REFERENCES

General penal provisions, § 35-1347.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33-418.

Revocation or suspension of licenses, certificates, and permits in general, § 35-102 and notes.

See notes to § 35-1334.

## § 35-1341. Unauthorized solicitation or representation.

It shall be unlawful for any person, without conforming to the provisions of this chapter, directly or indirectly to represent himself as having authority to solicit, negotiate, effect, procure, receive, or forward directly or indirectly any policy or renewal thereof, or to attempt to effect insurance, surety, or indemnity contracts covering any person or insurable interest in the District, or to countersign any policy

or renewal thereof. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 37, ch. II.)

## CROSS REFERENCES

Other provisions prohibiting representation of unauthorized companies, § 35-1123.

See notes to § 35-1334.

## § 35-1342. Exemption from license—Common carriers—Travel bureaus—Life, fraternal benefit, and ocean marine agents.

The provisions of this chapter relating to the licensing of policy-writing agents, soliciting agents, salaried company employees, and brokers shall not apply to the sale of personal accident insurance in the ticket offices of railroad companies or other common carriers, or in the offices of travel bureaus, nor to the business of life insurance, fraternal benefit societies, or ocean marine insurance, nor to insurance covering the property of railroad companies and other common carriers engaged in interstate commerce. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 38, ch. II.)

## § 35-1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35-1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly or indirectly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, fraternal beneficial association, order, or society, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than \$100 nor more than \$1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided*, That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for life insurance, or for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the police court by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 39, ch. II.)



## CROSS REFERENCES

Definitions generally, § 35-1303.

General penalties, § 35-1347.

See notes to § 35-1334.

**§ 35-1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form, and contents—Revocation or refusal.**

Any agent or broker licensed in the District may, upon payment of a license fee, as provided under section 35-1345, be licensed to procure policies from companies which are not authorized to do business in the District where such person is, after diligent effort, unable to procure policies to cover the kind or kinds of business required from companies duly authorized to transact business in the District. Each agent or broker so licensed shall pay to the collector of taxes, through the superintendent, on February 1 and August 1 of each year, a sum equal to 2 per centum of the amount of the gross premiums upon all kinds of policies procured by him during the immediately preceding six months' period ending December 31 and June 30, respectively, and, in default of such payment, the superintendent, through the corporation counsel, may bring suit to recover the same. Each agent or broker so licensed to procure policies from unauthorized companies shall execute and file with the department on or before the 10th day of each month an affidavit covering the transactions of the previous calendar month, setting forth (1) the description and location of the insured property or risk, and the name of the assured; (2) the amount insured in the policy or contract; (3) the gross premiums charged thereon; (4) the name of the company whose policy or contract is issued, and the kind or kinds of business effected; and (5) that said agent or broker after diligent effort was unable to procure the policies or contracts required to protect the property or risk described in the affidavit from companies duly authorized to transact business in the District.

Each agent or broker so licensed to procure policies from unauthorized companies shall keep a separate account of the business transacted thereunder, which shall be open at all times to the inspection of the superintendent. The license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit specified herein, or if the agent or broker procured policies from unauthorized companies without exercising diligent effort to secure the required business in duly authorized companies, or if the agent or broker procured policies from unauthorized companies whose standards of solvency and management do not meet the requirements necessary for the protection of the policyholders. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, § 40, ch. II.)

## CROSS REFERENCES

Taxation of insurance companies, see notes to § 35-1311.

See notes to § 35-1334.

**§ 35-1345. License fees.**

Annual fees to be paid through the superintendent to the collector of taxes for licenses issued under this chapter shall be as follows:

(a) For policy-writing agent or for firms, partnerships, or corporations licensed as such, \$50, without regard to the number of companies represented: *Provided*, That, in the case of firms, partnerships, and corporations, an additional fee of \$5 shall be charged for each person in excess of two who is named in such license as required under section 35-1336.

(b) For soliciting agent, \$5 for each company represented by such soliciting agent, or for each company represented by any policy-writing agent through which such soliciting agent solicits: *Provided*, That no soliciting agent shall be required to pay for soliciting agents' licenses a sum in excess of \$15 for any one license year.

(c) For salaried company employee authorized to sign policies and to solicit insurance, \$50, without regard to the number of companies represented by such salaried company employee.

(d) For salaried company employee authorized to solicit but not authorized to sign policies, \$5 for each company represented by said employee: *Provided*, That the aggregation of such fees shall not exceed \$15 for any one license year.

(e) For nonresident or resident brokers, \$25, except that the fee shall be \$5 in case the applicant for a resident broker's license is subject also to the fee prescribed under paragraphs (a) or (c) hereof.

(f) For license to procure lines in unauthorized companies, \$15.

(g) Under the license issued to any policy-writing agent or salaried company employee, or in the name of any firm, partnership, or corporation as provided under section 35-1336, and for which license a fee has been paid in accordance with paragraphs (a) or (c) hereof, there may be added names of persons who are employed in or who actively function through the District office of the policy-writing agent, salaried company employee, or firm, partnership, or corporation, and who have company authority to sign but not to solicit policies. For such persons there shall be charged a fee of \$1 per year for each company whose policies such person is authorized to sign.

(h) Broker's licenses may be issued in the names of individuals, firms, partnerships, or corporations. In the case of firms, partnerships, or corporations, the authority to solicit shall extend only to the individuals who are designated in the license and in the application therefor as having authority to solicit, and there shall be charged for each such individual in excess of two an additional fee of \$5.

(i) Licenses to procure lines in unauthorized companies shall be issued in the names of individuals only. (Oct. 9, 1940, 54 Stat. 1081, ch. 792, § 41, ch. II.)

## CROSS REFERENCES

Effective date of license, proration of fees, § 35-1337.

Refund of fees when license refused, § 47-1018.

Refund of license fees erroneously or unlawfully collected, § 47-1017 et seq.

See notes to § 35-1334.



§ 35-1346. Testimony—Production of books—No refusal because of self-incrimination—Exemption from punishment except for perjury.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of this chapter, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 42, ch. II.)

COMPILER'S NOTE

This section may supersede § 35-1129.

CROSS REFERENCES

Other provisions concerning testimony and the production of books and papers, § 35-1129.

§ 35-1347. Penalties not otherwise prescribed.

Any person who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon such person by any of the provisions of this chapter, for which violation or failure no penalty is elsewhere provided by this chapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding \$1,000 or be imprisoned for not more than twelve months, or both. Prosecutions authorized by this section shall be upon information filed in the police court by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 43, ch. II.)

CROSS REFERENCES

False statements or reports, §§ 35-1312, 35-1313.

Penalty against agent for representing unauthorized company, § 35-1343.

Penalty upon foreign or alien companies for transacting business before designating attorney to receive service of process, § 35-1327.

Revocation or suspension of agent's license, § 35-1340.

Revocation or suspension of certificate of authority, § 35-1306.

§ 35-1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.

Any person aggrieved by any action of the superintendent may, within twenty days after such action was taken, appeal in writing from such action to the commissioners. The hearings on said appeal may be either orally or in writing at the discretion of the commissioners, and they shall not be required to take evidence on such appeal. The decision of the commissioners on any question of fact on such appeal shall be final and conclusive, except the appeal provided for herein shall not affect the right to proceed under the provisions of section 35-1349. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 44, ch. II.)

CROSS REFERENCE

Other provisions concerning appeals, § 35-202.

§ 35-1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

Any person affected by an order, ruling, proceeding, or action of the superintendent, or any person acting in his behalf and at his instance, may contest the validity of the same in any court of competent jurisdiction by appeal or through any other appropriate proceedings. In said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, § 45, ch. II.)

COMPILER'S NOTE

Section 46 of the 1940 act cited to the text provides as follows: "All laws or parts of laws, insofar as they relate to business affected hereby, and are in conflict with any of the provisions of this act are hereby repealed."

§ 35-1350. Constitutionality.

Should any section or provision of this chapter be held unconstitutional or invalid, the validity of the chapter as a whole, or of any part thereof, other than the part decided to be unconstitutional or invalid, shall not be affected. (Oct. 9, 1940, 54 Stat. 1083, ch. 792, § 47, ch. II.)



## TITLE 36.—LABOR

Chap.	Sec.
1. Apprentices .....	36-101
2. Child labor and work permits .....	36-201
3. Employment of women .....	36-301
4. Minimum Wage Law .....	36-401
5. Workmen's compensation .....	36-501

### Chapter 1.—APPRENTICES

Sec.
36-101. By whom bound.
36-102. Jurisdiction of probate court.
36-103. Protection of apprentice by court.
36-104. Term.
36-105. Contract—Terms.
36-106. Complaints.
36-107. Removal of apprentice.
36-108. Assignments.
36-109. Concealment.
36-110. Form of contract.
36-111. To whom money to be paid.

#### § 36-101 [15: 11]. By whom bound.

A minor child may be bound as an apprentice by his guardian; or, if none, by his father; or, if neither father nor guardian, by his mother, with the consent, entered of record, of the probate court, or without such consent if the minor, being fourteen years of age, agree in writing to be so bound; or by the probate court as hereinafter provided. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 402.)

#### CROSS REFERENCES

Binding out inmates of National Training School for Boys as apprentices, § 32-819.

Binding out inmates of National Training School for Girls as apprentices, § 32-909.

Powers and duties of Board of Public Welfare concerning apprentices and contracts of apprenticeship, § 3-117 et seq.

Wages of minors, § 36-408 et seq.

#### STATUTORY REFERENCE

Federal Wage and Hour Law, U. S. C., title 29, §§ 201-219.

#### § 36-102 [15: 12]. Jurisdiction of probate court.

The probate court may bind out as an apprentice, or indenture to any proper person, any orphan child, any child abandoned by its parents or guardian, any child of habitually drunken, vicious, or unfit parents, when any such child as aforesaid shall not be in the care or custody of some person who is providing for its comfortable maintenance and education, and also any child habitually begging on the streets or from door to door, and any child kept in vicious or immoral associations. The terms of such apprenticeship or of such indenture shall be such in each case as the court may deem proper, having in view the future interests and welfare of the child. (Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 411.)

#### § 36-103 [15: 13]. Protection of apprentice by court.

The said probate court shall also have authority to approve contracts of apprenticeship, to determine questions between masters and apprentices, and to

protect the rights of apprentices, as elsewhere provided for in this chapter. (Mar. 3, 1901, 31 Stat. 1218, ch. 854, § 173.)

### NOTES TO DECISIONS

#### IN GENERAL

There is no statute in force in the District which clearly provides that female infants shall as a general rule attain their majority at the age of 18 years; exceptions to the common-law rule have been provided by statute, but they recognize the continued existence of the general rule of the common law. *Jones v. Jones* (63 App. D. C. 373, 72 Fed. (2d) 829).

#### § 36-104 [15: 14]. Term.

The utmost term of any apprenticeship shall be until the apprentice attains the age of twenty-one if a boy, or eighteen years if a girl. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 403.)

#### § 36-105 [15: 15]. Contract—Terms.

The writing by which such minor is bound as apprentice shall specify his age and what art, trade, or business he is to be taught. The master shall be bound to teach the same, and also to teach him reading, writing, and common arithmetic, and to supply him with suitable clothing and maintenance, and pay such amount, if any, as may be agreed upon for his services and expressed in the contract. The writing by which any minor is bound shall be filed in the office of the register of wills, and until it be so filed the master shall not be entitled to the services of said apprentice. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 404.)

#### § 36-106 [15: 16]. Complaints.

The probate court, during the term of any apprenticeship, may hear complaint of the apprentice, indentured child, or anyone in his behalf, against the master or person to whom indentured, for underserved or excessive correction, want of instruction, insufficient allowance of food, clothing, or lodging, or nonpayment of what was agreed to be paid; or the complaint of the master or person to whom indentured against the apprentice or indentured child for desertion or other misconduct; and, after reasonable notice of the complaint to the party against whom it is made, may determine the matter in a summary way and discharge either party from the contract of apprenticeship, or make such order as the case may require. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 405.)

#### § 36-107 [15: 17]. Removal of apprentice.

No master of an apprentice shall send or carry his apprentice out of the District, except in the case of mariners; and the said probate court, on being credibly informed that any master designs so to remove his apprentice, may require him to give bond



conditioned against such removal, and on his refusal so to do may discharge the apprentice. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 406.)

#### § 36-108 [15: 18]. Assignments.

The contract of apprenticeship, with the approbation of said court, may be assigned by the master, or, after his death, by his personal representatives, on such terms as the court may prescribe. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 407.)

#### § 36-109 [15: 19]. Concealment.

If any person shall conceal, harbor, or facilitate the running away of an apprentice, he shall be liable to an action therefor by the master, either in the said District Court of the United States for the District of Columbia or the municipal court, according to the amount of damages claimed. (Mar. 3, 1901, 31 Stat. 1253, ch. 854, § 408; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

#### AMENDMENT

Act of 1909 changes the name of justice of peace court to municipal court.

#### § 36-110 [15: 20]. Form of contract.

The form of the contract of apprenticeship shall be the following, or to the same effect:

This indenture witnesseth, that it is mutually agreed between ——— and ——— that ———, a minor, aged ——— years shall be taken and held as an apprentice for the term of ——— years, by the said ———; and the said ——— contracts and covenants with the said ——— to faithfully and carefully instruct the said ——— in all the handicraft of a ——— (And the said ——— further contracts and covenants that the said minor shall be allowed, as compensation for his services, at the rate of ———).

Witness our hands and seals this ——— day of ———.

—————. [SEAL.]

—————. [SEAL.]

Acknowledged before me, a notary public, this ——— day of ———.

A B, Notary Public.

(Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 409.)

#### § 36-111 [15: 21]. To whom money to be paid.

The money which the master is to pay shall be paid to the father or other party contracting with the master, or to the minor, in whole or in part, as said probate court may direct. (Mar. 3, 1901, 31 Stat. 1254, ch. 854, § 410.)

### Chapter 2.—CHILD LABOR AND WORK PERMITS

#### Sec.

- 36-201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.
- 36-202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.
- 36-203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.
- 36-204. Employment of minors under sixteen years of age prohibited in certain occupations.

#### Sec.

- 36-205. Employment of minors under eighteen years of age prohibited in certain occupations—Employment of females under eighteen in certain occupations.
- 36-206. Employment as messenger between ages of eighteen and twenty-one years prohibited during certain hours.
- 36-207. Employment or exhibition of minor under sixteen years of age as performer.
- 36-208. Work or vacation permit—To be procured by employer.
- 36-209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.
- 36-210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.
- 36-211. Evidence of age.
- 36-212. Vacation permits.
- 36-213. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.
- 36-214. Employer to furnish, on demand, proof of age of employee.
- 36-215. Penalties.
- 36-216. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.
- 36-217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.
- 36-218. Hours of employment—Work permit to be secured.
- 36-219. Badge to be obtained.
- 36-220. Street-trades badges—Evidence upon which issued.
- 36-221. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.
- 36-222. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.
- 36-223. Persons selling merchandise to minor under sixteen years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties for violation—Penalties for custodian of minor permitting violation.
- 36-224. Loitering around salesrooms of newspapers prohibited during school hours.
- 36-225. Board of Education to appoint inspectors—Appointments, how made.
- 36-226. Invalidity of portion of law not to affect remainder.
- 36-227. Board of Education to supervise and have appellate jurisdiction over agents and employees.

#### § 36-201 [7: 111]. Regulation of child labor—Employment of children under 14 years of age—Distribution of newspapers permitted.

No child under fourteen years of age shall be employed, permitted, or suffered to work in the District of Columbia, in, about, or in connection with any gainful occupation, with the exemption of housework performed outside of school hours in the home of the child's parent or legal guardian or agricultural work performed outside of school hours in connection with the child's own home and directly for the child's parent or legal guardian: *Provided*, That boys ten years of age and over may be employed outside of school hours in the distribution or sale of newspapers, subject to the provisions of sections 36-217 to 36-224. (May 29, 1928, 45 Stat. 998, ch. 908, § 1.)



## CROSS REFERENCES

Compulsory school attendance and work permits; department created; school census, § 31-201 et seq.  
Power and duties of Board of Public Welfare, § 36-222.  
Wages of minors, § 36-408 et seq.

## STATUTORY REFERENCE

Federal Wage and Hour Law, child labor provisions, U. S. C., title 29, § 212.

§ 36-202 [7: 112]. Employment of children under 18 years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

No minor under eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work, or housework, or in the distribution or sale of newspapers, as prescribed in section 36-201, and except in newspaper stuffing, subject to the provisions of section 36-217, more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than eight hours in any one day, nor shall any girl under eighteen years of age or boy under sixteen years of age be so employed, permitted, or suffered to work before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening of any day, nor shall any boy between sixteen and eighteen years of age be so employed before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening of any day. Every employer shall post and keep conspicuously posted in the establishment, in or about which any minor is employed, permitted, or suffered to work, a printed notice, furnished by the official authorized to enforce this chapter, setting forth the legal regulations governing the employment and hours of work of minors and occupations prohibited to minors in such establishments, and, in addition, shall keep accessible in the place of employment a list of minors under eighteen employed, permitted, or suffered to work, and an accurate time record showing the hours of beginning and ending work each day and the hours when the time allowed for meals begins and ends for said minors. The presence of any such minor in the place of work for a longer time in the day or week than stated in the printed regulation hours shall be prima facie evidence of a violation of the provisions of this section. (May 29, 1928, 45 Stat. 999, ch. 908, § 2.)

§ 36-203 [7: 113]. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.

No minor shall be employed, permitted, or suffered to work in any place of employment, or at any employment, dangerous or prejudicial to the life, health, safety or welfare of such minor. It shall be the duty of the Board of Education of the District of Columbia, and the said board shall have power, jurisdiction, and authority, after hearing duly held, to issue general or special orders prohibiting the employment of such minors in any employment or at any place of employment dangerous or prejudicial to the life, health, safety, or welfare of such minors: *Provided*, That no such order shall permit the employment of any minor at any employment specified in sections

36-204 to 36-207 at a lower age than the age therein specified. (May 29, 1928, 45 Stat. 999, ch. 908, § 3.)

§ 36-204 [7: 114]. Employment of minors under 16 years of age prohibited in certain occupations.

No minor under sixteen years of age shall be employed, permitted, or suffered to work at any of the following occupations: (1) In the operation of any machinery operated by power other than hand or foot power; or (2) in oiling, wiping, or cleaning machinery or assisting therein. (May 29, 1928, 45 Stat. 999, ch. 908, § 4.)

§ 36-205 [7: 115]. Employment of minors under 18 years of age prohibited in certain occupations—Employment of females under 18 in certain occupations.

No minor under eighteen years of age shall be employed, permitted, or suffered to work (1) at operating any freight or passenger elevator, or (2) in any quarry, tunnel, or excavation, or (3) in any tobacco warehouse or cigar or other factory or place where tobacco is manufactured or prepared. No girl under the age of eighteen years shall be employed, permitted, or suffered to work in any retail cigar or tobacco store, or in any hotel or for any apartment-house, or as an usher, attendant, or ticket seller in any theater or place of amusement, or as a messenger in the distribution or delivery of goods or messages for any person, firm, or corporation engaged in the business of transmitting or delivering messages. (May 29, 1928, 45 Stat. 999, ch. 908, § 5.)

§ 36-206 [7: 116]. Employment as messenger between ages of 18 and 21 years prohibited during certain hours.

No male between the ages of eighteen and twenty-one shall be employed, permitted, or suffered to work as a messenger for any person, firm, or corporation engaged in the business of transmitting or delivering messages before five o'clock in the morning or after twelve o'clock midnight of any day nor shall any female between the ages of eighteen and twenty-one be so employed before the hour of six o'clock in the morning, or after the hour of seven o'clock in the evening of any day. (May 29, 1928, 45 Stat. 1000, ch. 908, § 6.)

§ 36-207 [7: 117]. Employment or exhibition of minor under 16 years of age as performer.

No person having in his custody or control a minor under the age of sixteen years shall employ, exhibit, apprentice, sell, give away, or in any way dispose of such minor with a view to such minor being employed as an acrobat, or a gymnast, or a contortionist, or ropewalker, or in any exhibition of like character, or as a beggar, or street singer, or musician, or cause or procure such minor to be so engaged. (May 29, 1928, 45 Stat. 1000, ch. 908, § 7.)

§ 36-208 [7: 118]. Work or vacation permit—To be procured by employer.

No minor between fourteen and eighteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except in agricultural work or housework as specified in section 36-201, unless his employer pro-



cures and keeps on file and accessible to any attendance officer, inspector, or other person authorized to enforce this chapter a work or vacation permit issued as hereinafter prescribed, except that children between fourteen and eighteen years of age may be employed without a permit outside of school hours in irregular or casual work usual to the home of the employer: *Provided*, That such employment shall not be in connection with nor form a part of the business, trade, profession, or occupation of the employer: *And provided further*, That such employment shall not be specifically prohibited by any provision of this chapter or by any order issued under the authority of section 36-203. (May 29, 1928, 45 Stat. 1000, ch. 908, § 8.)

§ 36-209 [7: 119]. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

The work or vacation permit required by this chapter shall be issued only by the director of the department of school attendance and work permits created under the board of education according to the provisions of sections 31-211 to 31-213, or by any person duly authorized by said director, and shall state the name, sex, color, date, and place of birth, and place of residence of the minor, the grade last completed by said minor, and the kind of evidence of age accepted, and such other details as may be necessary for the identification of the minor. It shall certify that all the requirements for issuing a work or vacation permit under the provisions of this chapter have been fulfilled and shall be signed by the person issuing it. It shall state the name and address of the employer for whom and the nature of the specific occupation in which the work permit authorizes the minor to be employed, and no permit shall be valid except for the employer so named and for the occupation so designated. It shall bear a number, shall show the date of its issue, and shall be signed by the minor for whom it is issued in the presence of the person issuing it, and shall be mailed to the employer by the issuing officer, and in no case given to the minor. A record giving in full for each applicant the facts with reference to his sex, color, date, and place of birth, name and address of parent, guardian, or custodian, name and address of employer, and nature of the specific occupation in which the minor is to be employed, grade and school last attended, evidence of age, and date of issuance or date of refusal of certificate, with reason, shall be kept in the department of school attendance and work permits, together with the physician's certificate of physical fitness, the school record, and the employer's statement of intention to employ the child. Lists shall be sent weekly to each school during the school term giving the names and addresses of all children from that school to whom permits have been issued or refused. (May 29, 1928, 45 Stat. 1000, ch. 908, § 9.)

§ 36-210 [7: 120]. Application for permit—Evidence required to be furnished—Physician's certificate—School record.

The officer authorized in section 36-209 to issue work or vacation permits shall issue such permits only

upon the application in person of the minor desiring employment, accompanied, if said minor is under sixteen years of age, by his parent, guardian, or custodian, and after having received, examined, and approved and filed the following papers, namely:

(a) A statement signed by the prospective employer or by some one duly authorized on his behalf, stating that he expects to give such minor present employment, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and of days per week which said minor shall be employed, and agreeing to send the notice of the commencement of employment, and to return the permit according to the provisions of this chapter.

(b) Evidence of age as provided in section 36-211, showing that the minor is at least fourteen years of age.

(c) A certificate of physical fitness, if such minor is under sixteen years of age; otherwise no such certificate of physical fitness shall be required. Such certificate of physical fitness shall be signed by a medical inspector of the public schools of the District of Columbia, assigned by the Board of Health for such purpose. It shall show the height and weight of the minor and shall state that the said minor has been thoroughly examined by the said physician at the time of his application for a permit, has attained the normal development of a minor of his age and is in sound health, and is physically qualified for the employment specified in the statement submitted in accordance with the requirements of this chapter.

(d) A school record, if such minor is under sixteen years of age; otherwise no such record shall be required. Such school record shall be filled out and signed by the teacher of the class last attended by the minor and countersigned by the principal of the school, public, private, or parochial, which the minor has last attended or by some one duly authorized by him: *Provided*, That the signature of the teacher shall not be required in the case of a school record filled out during the summer vacation period of the public schools. It shall certify that the said minor is able to read and write correctly sentences in the English language, has satisfactorily completed the eighth grade of the elementary school course prescribed for the public schools in the District of Columbia, or has regularly received in a private or parochial school instruction deemed equivalent by the Board of Education to that prescribed for the completion of the eighth grade in the public schools. Such school record shall give also the full name, date of birth, grade last completed, and residence of the minor as shown on the records of the school. (May 29, 1928, 45 Stat. 1001, ch. 908, § 10.)

§ 36-211 [7: 121]. Evidence of age.

The evidence of age required by this chapter shall consist of one of the following proofs of age, which shall be required in the order herein designated:

(a) A birth certificate or attested transcript issued by a registrar of vital statistics or other officer charged with the duty of recording births.



(b) A baptismal record or duly certified transcript thereof showing the date of birth and place of baptism of the minor.

(c) A bona fide contemporary record of the date and place of the child's birth kept in the Bible in which the records of the births in the family of the child are preserved, or other documentary evidence satisfactory to the director of the department of school attendance and work permits, such as a passport showing the age of the child, a certificate of arrival in the United States issued by the United States immigration officers and showing the age of the child, or a life-insurance policy: *Provided*, That such other satisfactory documentary evidence has been in existence at least one year prior to the time it is offered in evidence: *And provided further*, That a school record or a parent's, guardian's, or custodian's affidavit, certificate, or other written statement of age shall not be accepted except as specified in paragraph (d).

(d) A certificate of physical age, signed by a medical inspector of the public schools assigned by the Board of Health for such purposes and based upon a physical examination, which shall state the height and weight of such minor and other evidence upon which the opinion as to the age of such minor is founded. A parent's, guardian's, or custodian's affidavit of age, and a record of the age as given in the register of the school first attended by the minor, if obtainable, or in the earliest available school census, shall accompany the physician's certificate of age. And no work or vacation permit shall be issued if any of the above possible sources shows the minor to be under the age of fourteen.

The proof of age specified in subdivision (a) shall be accepted in preference to that specified in any subsequent subdivision, and no proof of age permitted by any subsequent subdivision shall be accepted unless there be received and filed substantial evidence that the proof required by the preceding subdivisions can not be obtained. Should such preferred proof of age be later procured, or if subsequent proof of age shall be procured and shall conclusively establish the falsity of the proof previously accepted, the director of the department of school attendance and work permits shall cancel the permit and issue or refuse a new one according to the age thus established. (May 29, 1928, 45 Stat. 1001, ch. 908, § 11.)

#### § 36-212 [7: 122]. Vacation permits.

The director of the department of school attendance and work permits, or any person duly authorized by him, shall have authority to issue a vacation permit to a minor between the age of fourteen and sixteen years, permitting employment during the regular summer vacation period of the public schools, or during the school term at such time as the public schools are not in session, if the age of such minor has been proved according to section 36-211, and such minor has in all other respects, except as to completion of the eighth grade, fulfilled the requirements for a work permit specified in sections 36-201 to 36-227. These permits shall be different in color from the work permit allowing employment while school is in session and shall state the periods dur-

ing which its use is valid. (May 29, 1928, 45 Stat. 1002, ch. 908, § 12.)

#### § 36-213 [7: 123]. Employer to notify department at commencement and termination of employment of minor—Issuance of new certificates.

Every employer receiving a work or vacation permit shall notify the department in writing within three days of the time of the commencement of the employment of such minor, and within three days after termination of the employment shall return said permit to the department. Failure to so notify shall be cause for the cancellation of the permit; and failure to so return it shall be cause for the refusal of further permits upon the application of such employer. Returned permits shall be filed and the proper school authorities notified. A new certificate shall not be issued to any minor except upon presentation of a new promise of employment and a new certificate of physical fitness. (May 29, 1928, 45 Stat. 1002, ch. 908, § 13.)

#### § 36-214 [7: 124]. Employer to furnish, on demand, proof of age of employee.

Whenever any person authorized to enforce this chapter shall have reason to doubt that any minor employed in any occupation for which a permit is required by this chapter, and for whom a work permit or vacation permit is not on file, has reached the age of eighteen years, such person may make demand on such minor's employer that such employer shall either furnish him within ten days the evidence required for a work permit showing that the minor is in fact eighteen years of age, or shall refuse to employ or permit or suffer such child to work. In case such evidence is not furnished to such person within ten days after such demand, the employer shall not thereafter continue to employ such minor or permit or suffer such minor to work in such establishment. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of this chapter, that such minor is under eighteen years of age and is unlawfully employed. (May 29, 1928, 45 Stat. 1002, ch. 908, § 14.)

#### § 36-215 [7: 125]. Penalties.

Whoever employs or permits or suffers any minor to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, or of any order issued under the provisions of section 36-203, or interferes with, obstructs, or hinders the department enforcing the child labor law, its officers or agents, or any other person authorized to inspect places of employment under this chapter and whoever, having under his control or custody any minor, permits or suffers him to be employed or to work in violation of any of the provisions of sections 36-201 to 36-214, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment not less than ten days nor more than thirty days, or in the discretion of the court by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment not less



than thirty days nor more than ninety days, or in the discretion of the court by both such fine and imprisonment. Every day during which any violation of this chapter continues shall constitute a separate and distinct offense. (May 29, 1928, 45 Stat. 1003, ch. 908, § 15.)

**§ 36-216 [7: 126]. Director of department of school attendance and work permits to enforce law—Inspection of places in which minors are employed.**

It shall be the duty of the director of the department of school attendance and work permits organized under the Board of Education of the District of Columbia and of the authorized inspectors and agents of said department to cause all the provisions of this chapter to be enforced, to make complaints against persons violating its provisions, and to prosecute violations of the same. The director of the said department, its inspectors, and agents are empowered and instructed to visit and inspect at any time, and as often as shall be necessary in order effectively to enforce the provisions of this chapter, all places where minors are employed, and shall have authority to enter any place or establishment covered by the terms of this chapter, and to have access to work or vacation permits kept on file by the employer and such other records as may aid in the enforcement of this chapter. All persons authorized to issue certificates of physical fitness and all attendance officers and probation officers are likewise empowered to visit and inspect at all reasonable hours all places where minors may be employed. (May 29, 1928, 45 Stat. 1003, ch. 908, § 16.)

**CROSS REFERENCE**

Director of department of school attendance and work permits, §§ 31-211 to 31-213.

**§ 36-217 [7: 127]. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.**

No boy under sixteen years of age shall be employed in the stuffing of newspapers, nor shall the work of any boy between the ages of sixteen and eighteen so employed exceed forty hours in any one week, nor shall he be employed on more than one night in any one week. No boy under twelve years of age and no girl under eighteen years of age shall distribute, sell, expose, or offer for sale any newspapers, magazines, periodicals, or any other articles or merchandise of any description, or distribute handbills or circulars, in any street or public place, or exercise the trade of bootblack or any other trade, in any street or public place: *Provided*, That the provisions of this chapter shall not apply to boys ten years of age and over engaged in the distribution of newspapers, magazines, or periodicals on fixed routes. (May 29, 1928, 45 Stat. 1003, ch. 908, § 17.)

**§ 36-218 [7: 128]. Hours of employment—Work permit to be secured.**

No boy under sixteen years of age shall work or shall be employed or permitted or suffered to work at any of the trades or occupations mentioned in section 36-217, in any street or public place after the hour of seven postmeridian or before the hour of six antemeridian, or, unless holding a work per-

mit issued in accordance with the provisions of this chapter, during the hours when the public schools are in session. (May 29, 1928, 45 Stat. 1003, ch. 908, § 18.)

**§ 36-219 [7: 129]. Badge to be obtained.**

No boy under sixteen years of age shall work at any time, or be employed or permitted or suffered to work at any time, in any of the trades or occupations mentioned in section 36-217, unless he shall have procured and shall carry on his person in plain sight while so working a badge as hereinafter provided, issued by the director of the department of school attendance and work permits, or some person duly authorized by him, and unless he complies with all the legal requirements concerning school attendance. (May 29, 1928, 45 Stat. 1004, ch. 908, § 19.)

**§ 36-220 [7: 130]. Street-trades badges—Evidence upon which issued.**

The officer authorized by this chapter to issue street-trades badges shall issue such a badge only upon application of the minor desiring it, accompanied by the parent, guardian, or custodian of such minor, and after having received, examined, approved, and filed the following papers: (1) Evidence that the minor is of the age required by section 36-217, which shall consist of the same evidence as is required for a work permit under this chapter; (2) evidence of physical fitness, which shall consist of a certificate of physical fitness issued as required for a work permit under this chapter; (3) a statement signed by the principal of the school and the teacher of the class which the minor is attending, stating that such minor is regularly enrolled in school and showing the grade such minor has attained, and certifying that in their opinion the minor is physically and mentally qualified to undertake the work contemplated without retarding his progress in school: *Provided*, That a work permit issued as required by this chapter may be accepted by the issuing officer in lieu of any other requirements for said badge. (May 29, 1928, 45 Stat. 1004, ch. 908, § 20.)

**§ 36-221 [7: 131]. Information to be contained on—Record to be kept—Badges not transferable—Principal of schools to keep list—Revocation if detrimental to minor—Badges to expire annually.**

Such badge shall bear a number, and every such badge on its reverse side shall be signed in the presence of the officer issuing the same by the minor in whose name it is issued and shall contain the minor's address and date of birth and such other information as the officer issuing the same shall deem necessary. A complete record of badges issued and refused, and of the facts relating thereto, including the name and address of the parent, guardian, or custodian, the height and weight of the minor, the day, year, and month of birth of the minor, the date of issuance and kind of evidence of age accepted, and school grade and name of school attended, shall be kept in the office of the director of the department of school attendance and work permits. No minor to whom such badge is issued shall give, lend, sell, or otherwise transfer it to any other person, or be



engaged in any of the trades or occupations mentioned in this section without having conspicuously on his person such badge, and he shall exhibit the same upon demand to any police or attendance officer, or to any person charged with the duty of enforcing this chapter. Lists shall be sent weekly to each school during the school term, giving the names and addresses of all minors to whom street trades badges have been issued and refused. The principal of each school shall keep a complete list of all minors in his school to whom badges, as herein required, have been issued, and whenever in the opinion of said principal the possession of any such permit and badge is detrimental to the school standing or well-being of any such minor, shall recommend to the officer issuing the same that the badge of such minor be revoked. All such badges shall expire annually on the 1st day of January. The color of the badge shall be changed each calendar year. (May 29, 1928, 45 Stat. 1004, ch. 908, § 21.)

§ 36-222 [7:132]. Penalties for violations of sections 36-217 to 36-224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.

Any minor who shall engage in any of the trades or occupations mentioned in section 36-217, in violation of any of the provisions of sections 36-217 to 36-224 of this chapter, shall for the first offense be warned by the director of the department of school attendance and work permits and the parent, guardian, or custodian of such minor shall be notified. For any subsequent violation, while under the care of said parent, guardian, or custodian, and with his or her knowledge or consent, said minor may, in the discretion of the court, be deemed to be lacking in proper parental care and guardianship, and may on petition filed for that purpose, and in the discretion of the court, be committed to the Board of Public Welfare of the District of Columbia until twenty-one years of age or for a shorter period as the court may see fit, the said Board of Public Welfare being hereby expressly authorized and required to receive minors so committed. The court may, instead of immediate commitment, suspend the imposition or execution of judgment of commitment, or may, after partial hearing and instead of proceeding to judgment, suspend further proceedings without judgment, with the consent of the parent, guardian, or custodian of said minor, and in either event may assign a probation officer of the juvenile court to exercise probationary supervision over said minor, said probationary supervision to continue in force and the said minor to remain under the jurisdiction and control of the court as a ward of the court until said minor attains the age of seventeen years, or unless sooner discharged by order of the court or committed to said Board of Public Welfare, the court hereby being given power to withdraw said case from said probationary supervision at any time during said probation period, and after a hearing may commit said minor at once to the said board if, in the opinion of the court, the best interests and welfare of said minor shall so require. Upon the recommendation of the principal or chief executive officer of the school which such minor is attend-

ing or upon the complaint of any school attendance officer, or any officer authorized to enforce this chapter, the badge of any minor who violates any provision of this chapter, or who becomes delinquent, or who fails to comply with all the legal requirements concerning school attendance, may be revoked by the director of the department of school attendance and work permits for such period as the said officer may require; and upon revocation said officer shall so notify the parent, guardian, or custodian having such minor in charge, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge to the said officer. After notice to such minor and his parent, guardian, or custodian of revocation of such badge, he shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender his badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22.)

#### CROSS REFERENCE

General provisions concerning Board of Public Welfare, § 3-101 et seq.

§ 36-223 [7:133]. Persons selling merchandise to minor under 16 years of age for resale or distribution in public place to ascertain that minor wears badge—Penalties for violation—Penalties for custodian of minor permitting violation.

Any person who either for himself or as agent of any other person, or of any firm, corporation, or company, furnishes or sells or offers for sale to any minor under sixteen any article of any description to be used for the purpose of sale or distribution in any public place, shall first ascertain that said minor wears his own badge in plain sight as herein provided, and if said minor has no badge, no article shall be furnished or sold to him. Any person who fails to comply with the foregoing provision, or who furnishes or sells or offers for sale to any minor any article of any description, with the knowledge that he intends to sell or distribute such article in violation of any provision of this chapter, or after having received written notice from any officer charged with the enforcement of this chapter, that such minor is selling such article in violation of any provision of said chapter, or any person who procures any minor to violate any provision of this chapter, shall for a first offense be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. Whoever, having under his control or custody any minor, permits or consents to the violation by such minor of any of the provisions of sections 36-217 to 36-223, shall for a first offense be punished by a fine of not less than \$5 nor more than \$100, or by imprisonment of not less than five nor more than thirty days, or by both such fine and imprisonment, and for any subsequent offense shall be punished by a fine of not less than \$10 nor more than \$100, or



by imprisonment for not less than ten nor more than sixty days, or by both such fine and imprisonment. (May 29, 1928, 45 Stat. 1005, ch. 908, § 23.)

§ 36-224 [7: 134]. Loitering around salesrooms of newspapers prohibited during school hours.

No boy under the age of sixteen years required by law to attend school shall be permitted by any newspaper publisher or printer or person having for sale newspapers or periodicals of any character, to loiter or remain around any salesroom, assembly room, circulation room, or office for the sale of newspapers, between the hours of the opening of school in the forenoon and the close of school in the afternoon, on days when school is in session. Any newspaper publisher, printer, circulation agent, or seller of newspapers shall, upon conviction of permitting newsboys to loiter or remain around any assembly room, circulation room, salesroom, or office where papers are distributed or sold during such hours, be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not less than ten days or more than thirty days. (May 29, 1928, 45 Stat. 1006, ch. 908, § 24.)

§ 36-225 [7: 135]. Board of Education to appoint inspectors—Appointments, how made.

The Board of Education of the District of Columbia is hereby authorized, empowered, and directed to appoint such a number of inspectors, clerks, and other assistants as shall be necessary to carry out the provisions of this chapter: *Provided*, That at least two inspectors shall be so appointed. Such appointments shall be made from a list of applicants obtained from open competitive examinations conducted by the Boards of Examiners of the Board of Education designed to test the fitness of the applicant for the duties to be performed. (May 29, 1928, 45 Stat. 1006, ch. 908, § 25.)

§ 36-226 [7: 136]. Invalidity of portion of law not to affect remainder.

If any provision of this chapter or the application of such provision to certain circumstances be held invalid, the remainder of this chapter and the application of such provision to circumstances other than those as to which it is held invalid shall not be affected thereby. (May 29, 1928, 45 Stat. 1006, ch. 908, § 28.)

§ 36-227 [7: 137]. Board of Education to supervise and have appellate jurisdiction over agents and employees.

The Board of Education shall exercise general supervision and appellate jurisdiction over the agents and employees of said board engaged in the execution of this chapter. (May 29, 1928, 45 Stat. 1006, ch. 908, § 29.)

### Chapter 3.—EMPLOYMENT OF WOMEN

#### Sec.

- 36-301. Employment of females—Period of employment.
- 36-302. Hours of employment.
- 36-303. Hours of continuous labor restricted.
- 36-304. Notice to be posted—Allowance for meals.
- 36-305. Time book to be kept.
- 36-306. Inspectors—Appointment.
- 36-307. Inspectors authorized to enter buildings.

#### Sec.

- 36-308. Inspectors to enforce law—Reports.
- 36-309. Penalties.
- 36-310. Employers to furnish seats for female employees.
- 36-311. Penalty.

§ 36-301 [19: 21]. Employment of females—Period of employment.

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in the District of Columbia more than eight hours in any one day or more than six days or more than forty-eight hours in any one week. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 1.)

#### CROSS REFERENCE

Wages for women, § 36-408 et seq.

#### STATUTORY REFERENCE

Federal Wage and Hour Law, U. S. C., title 29, §§ 201-219.

§ 36-302 [19: 22]. Hours of employment.

No female under eighteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section 36-301 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening of any one day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 2.)

#### NOTES TO DECISIONS

##### EMPLOYEES OF GOVERNMENT PRINTING OFFICE

This act is not applicable to female employees in Government Printing Office (33 O. A. G. 355).

§ 36-303 [19: 23]. Hours of continuous labor restricted.

No female shall be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in section 36-301 in which three or more such females are employed without an interval of at least three-quarters of an hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half past one o'clock in the afternoon and if she is then dismissed for the remainder of the day. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 3.)

§ 36-304 [19: 24]. Notice to be posted—Allowance for meals.

Every employer shall post and keep posted in a conspicuous place in every room in any establishment or occupation named in section 36-301 in which any females are employed a printed notice stating the number of hours such females are required or permitted to work on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. The printed form of such notice shall be furnished by the inspectors authorized by sections 36-301 to 36-309. The employment of any such female for a longer time in any day than that stated in the printed notice shall be deemed a violation of the provisions of this section. Where the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females employed, the inspectors authorized to enforce sec-



tions 36-301 to 36-309 may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which the females are required or permitted to work on each day of the week and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises and exhibited to all inspectors authorized to enforce sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 4.)

**§ 36-305 [19: 25]. Time book to be kept.**

Every employer shall keep a time book or record for every female employed in any establishment or occupation named in section 36-301, stating the wages paid, the number of hours worked by her on each day of the week, the hours of beginning and stopping such work, and the hours of beginning and ending the recess allowed for meals. Such time book or record shall be open at all reasonable hours to the inspection of the officials authorized to enforce sections 36-301 to 36-309. Any employer who fails to keep such record as required by this section, or makes any false statement therein, or refuses to exhibit such time book or record, or makes any false statement to an official authorized to enforce sections 36-301 to 36-309 in reply to any question put in carrying out the provisions of sections 36-301 to 36-309 shall be liable for a violation thereof. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 5.)

**§ 36-306 [19: 26]. Inspectors—Appointment.**

The commissioners of the District of Columbia are hereby authorized to appoint three inspectors, two of whom shall be women, to carry out the purposes of sections 36-301 to 36-309. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 6.)

**COMPILER'S NOTE**

As enacted this section carried the words "at a compensation not exceeding \$1,200 each per annum." The salary is now governed by the Classification Act of 1923 (42 Stat. 1488; U. S. C., title 5, § 673).

**§ 36-307 [19: 27]. Inspectors authorized to enter buildings.**

The inspectors authorized by sections 36-301 to 36-309 may in the discharge of their duties enter any place, building, or room where any labor is being performed by females which is affected by the provisions of sections 36-301 to 36-309 whenever such inspectors may have reasonable cause to believe that any such labor is being performed therein. (Feb. 24, 1914, 38 Stat. 291, ch. 28, § 7.)

**§ 36-308 [19: 28]. Inspectors to enforce law—Reports.**

The inspectors authorized by sections 36-301 to 36-309 shall visit and inspect the establishments and places of employment named in section 36-301 as often as practicable, during reasonable hours, and shall cause the provisions of sections 36-301 to 36-309 to be enforced therein and also the provisions of sections 36-310, 36-311. They shall make a daily report to the commissioners of the District of Columbia, and also report any cases of illegal employment contrary to the provisions of sections 36-301 to

36-309 to the corporation counsel of the District of Columbia. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 8.)

**§ 36-309 [19: 29]. Penalties.**

Any person who violates or does not comply with any of the provisions of sections 36-301 to 36-309 shall upon conviction be punished for a first offense by a fine of not less than \$20 nor more than \$50; for a second offense, by a fine of not less than \$50 nor more than \$200; for a third offense, by a fine of not less than \$250. (Feb. 24, 1914, 38 Stat. 292, ch. 28, § 9.)

**§ 36-310 [19: 30]. Employers to furnish seats for female employees.**

All persons who employ females in stores, shops, offices, or manufactories as clerks, assistants, operatives, or helpers in any business, trade, or occupation carried on or operated by them in the District of Columbia, shall be required to procure and provide proper and suitable seats for all such females and shall permit the use of such seats, rests, or stools, as may be necessary, and shall not make any rules, regulations, or orders preventing the use of such stools or seats when any such female employees are not actively employed in their work in such business or employment. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 1.)

**§ 36-311 [19: 31]. Penalty.**

If any employer of female help in the District of Columbia, shall neglect or refuse to provide seats, as provided in sections 36-310 and 36-311, or shall make any rules, orders, or regulations in his shop, store, or other place of business, requiring females to remain standing when not necessarily employed in service or labor therein, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be liable to a fine therefor in a sum not to exceed twenty-five dollars, with costs, in the discretion of the court. (Mar. 2, 1895, 28 Stat. 964, ch. 192, § 2.)

**Chapter 4.—MINIMUM WAGE LAW**

**Sec.**

- 36-401. Definitions.
- 36-402. Minimum Wage Board—Members—Quorum.
- 36-403. Officers—Compensation.
- 36-404. Authority to take testimony—Subpoenas.
- 36-405. Regulations.
- 36-406. Annual report.
- 36-407. Authority concerning wages of women and minors.
- 36-408. Standards of wages to be declared.
- 36-409. Conference on inadequate wages.
- 36-410. Report of findings and recommendations.
- 36-411. Action of Board—Public hearings.
- 36-412. Licenses for less than time-rate standard.
- 36-413. Determination of minimum wages for minors.
- 36-414. Separate inquiries.
- 36-415. Investigations.
- 36-416. Decisions of fact by board final—Appeals on questions of law.
- 36-417. Penalties for violations.
- 36-418. Penalties for discrimination by employer against employee who testifies.
- 36-419. Employers responsible for acts of agents.
- 36-420. Jurisdiction of police court.
- 36-421. Civil action to recover if less than minimum wage paid.
- 36-422. Title and purpose of chapter.



## § 36-401 [19: 211]. Definitions.

Where used in this chapter—

The term "Board" means the Minimum Wage Board created by section 36-402;

The term "commissioners" means the commissioners of the District of Columbia;

The term "woman" includes only a woman of eighteen years of age or over;

The term "minor" means a person of either sex under the age of eighteen years;

The term "occupation" includes a business, industry, trade, or branch thereof, but shall not include domestic service. (Sept. 19, 1918, 40 Stat. 960, ch. 174, § 1.)

## COMPILER'S NOTES

This statute was held unconstitutional in the case of *Atkins v. Children's Hosp.* (261 U. S. 525, 67 L. Ed. 785, 43 Sup. Ct. 394, 24 A. L. R. 1238). In 1936 this case was overruled and a law of similar import, enacted by the State of Washington, was declared constitutional, the case of *Morehead v. New York ex rel. Tipaldo* (298 U. S. 587, 80 L. Ed. 1347, 56 Sup. Ct. 918, 103 A. L. R. 1445), being distinguished. *West Coast Hotel Co. v. Parrish* (300 U. S. 379, 81 L. Ed. 703, 57 Sup. Ct. 578, 108 A. L. R. 1330).

On the theory that the last-mentioned case revitalized the District of Columbia Minimum Wage Law, it is incorporated in this Code.

## STATUTORY REFERENCE

Federal Wage and Hour Law, U. S. C., title 29, §§ 201-219.

## § 36-402 [19: 212]. Minimum Wage Board—Members—Quorum.

There is hereby created a board to be known as the "Minimum Wage Board," to be composed of three members to be appointed by the commissioners of the District of Columbia. As far as practicable, the members shall be so chosen that one will be representative of employees, one representative of employers, and one representing the public.

The commissioners shall make their first appointments hereunder within thirty days after this chapter takes effect, and shall designate one of the three members first appointed to hold office until January 1, 1919; one to hold office until January 1, 1920; and one to hold office until January 1, 1921. On or before the first day of January of each year, beginning with the year 1919, the commissioners shall appoint a member to succeed the member whose term expires on such first day of January, and such new appointee shall hold office for the term of three years from such first day of January. Each member shall hold office until his successor is appointed and has qualified; and any vacancy that may occur in the membership of the board shall be filled by appointment by the commissioners for the unexpired portion of the term.

A majority of the members shall constitute a quorum to transact business, and the act or decision of such a majority shall be deemed the act or decision of the board; and no vacancy shall impair the right of the remaining members to exercise all the powers of the board. (Sept. 19, 1918, 40 Stat. 961, ch. 174, § 2.)

## § 36-403 [19: 213]. Officers—Compensation.

The first members appointed shall, within twenty days after their appointment, meet and organize the board by electing one of their number as chairman

and by choosing a secretary, who shall not be a member of the board; and on or before the 10th day of January of each year thereafter the board shall elect a chairman and choose a secretary for the ensuing year. The chairman and the secretary shall each hold office until his successor is elected or chosen; but the board may at any time remove the secretary. The secretary shall perform such duties as may be prescribed. The compensation of the secretary and all other employees of the board shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended (U. S. C., title 5, ch. 13). None of the members shall receive any salary as such. The board shall have power to employ agents and such other assistants as may be necessary for the proper performance of its duties: *Provided*, That until further authorization by Congress, the sum which it may expend, including the salary of the secretary, shall not exceed the sum of \$5,000. (Sept. 19, 1918, 40 Stat. 961, ch. 174, § 3; June 16, 1938, 52 Stat. 758, ch. 474.)

## AMENDMENT

Act of 1938 amended act of 1918 by striking out the words "and receive such salary, not in excess of \$2,500 per annum, as may be fixed by the Board," and inserting in lieu thereof "the compensation of the Secretary and all other employees of the Board shall be fixed in accordance with the provisions of the Classification Act of 1923, as amended."

## NOTES TO DECISIONS

## CONSTITUTIONALITY

A statute which authorizes a commission, after hearing representatives of employers and employees together with disinterested persons representing the public, to establish such minimum standards of wages and conditions of labor for women and minors as it shall consider reasonable and not detrimental to health and morals and which shall be sufficient for the decent maintenance of women; and to grant special licenses for the employment of apprentices and women who are physically defective or crippled by age or otherwise at less than the prescribed minimum wage is not unconstitutional. *West Coast Hotel Co. v. Parrish* (300 U. S. 379, 81 L. Ed. 703, 57 Sup. Ct. 578, 108 A. L. R. 1330).

## § 36-404 [19: 214]. Authority to take testimony—Subpoenas.

At any public hearing held by the board any person interested in the matter being investigated may appear and testify. Any member of the board shall have power to administer oaths and the board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers and other evidence relative to any matters under investigation, at any such public hearing or at any session of any conference held as hereinafter provided. In case of disobedience to a subpoena the board may invoke the aid of the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpoena the court may issue an order requiring appearance before the board, the production of documentary evidence, and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 961, ch. 174, § 4.)



§ 36-405 [19: 215]. Regulations.

The board is hereby authorized and empowered to make rules and regulations for the carrying into effect of this chapter, including rules and regulations for the selection of members of the conferences hereinafter provided for and the mode of procedure thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, § 5.)

CROSS REFERENCE

Rules and regulations generally, § 1-226 and notes.

§ 36-406 [19: 216]. Annual report.

The board shall, on or before the 1st day of January of the year 1919, and of each year thereafter, make a report to the commissioners of its work and the proceedings under this chapter. (Sept. 19, 1918, 40 Stat. 962, ch. 174, § 6.)

COMPILER'S NOTE

§ 7 of the act of 1918 provided an appropriation of \$5,000 for the year 1919.

§ 36-407 [19: 218]. Authority concerning wages of women and minors.

The board shall have full power and authority: (1) To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2) to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3) to require from such employer full and true statements of the wages paid to all women and minors in his employment.

Every employer shall keep a register of the names of the women and minors employed by him in any occupation in the District of Columbia, of the hours worked by each, and of all payments made to each, whether paid by the time or by the piece; and shall, on request, permit any member or authorized representative of the Board to examine such register.

To assist the Board in carrying out this chapter the Commissioners shall at all times give it any information or statistics in their possession under sections 36-301 to 36-309. (Sept. 19, 1918, 40 Stat. 962, ch. 174, § 8.)

CROSS REFERENCES

Other provisions concerning employment of minors, title 31, ch. 2, and chs. 1, 2 of this title.

Other provisions regulating employment of women, § 36-301 et seq.

Wages of employees employed on governmental projects, § 1-815.

§ 36-408 [19: 219]. Standards of wages to be declared.

The Board is hereby authorized and empowered to ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b) standards of minimum wages for minors in any occupation within the District of Columbia, and what wages

are unreasonably low for any such minor workers. (Sept. 19, 1918, 40 Stat. 962, ch. 174, § 9.)

§ 36-409 [19: 220]. Conference on inadequate wages.

If, after investigation, the Board is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living and maintain them in health and protect their morals, it may call and convene a conference for the purpose and with the powers of considering and inquiring into and reporting on the subject investigated by the Board and submitted by it to such conference. The conference shall be composed of not more than three representatives of the employers in such occupation, of an equal number of representatives of the employees in such occupation, of not more than three disinterested persons representing the public, and of one or more members of the Board. The Board shall name and appoint all the members of the conference and designate the chairman thereof. Two-thirds of the members of the conference shall constitute a quorum, and the decision or recommendation or report of the conference on any subject submitted shall require a vote of not less than a majority of all its members.

The Board shall present to the conference all the information and evidence in its possession or control relating to the subject of the inquiry by the conference, and shall cause to be brought before the conference any witnesses whose testimony the Board deems material. (Sept. 19, 1918, 40 Stat. 962, ch. 174, § 10.)

§ 36-410 [19: 221]. Report of findings and recommendations.

After completing its consideration of and inquiry into the subject submitted to it by the Board, the conference shall make and transmit to the Board a report containing its findings and recommendations on such subject, including recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals.

In its recommendations on a question of wages the conference (1) shall, where it appears that any substantial number of women workers in the occupation under inquiry are being paid by piece rates as distinguished from time rate, recommend minimum piece rates as well as minimum time rate and recommend such minimum piece rates as will, in its judgment, be adequate to supply the necessary cost of living to women workers in such occupation of average ordinary ability and to maintain them in health and protect their morals; and (2) shall, when it appears proper or necessary, recommend suitable minimum wages for learners and apprentices in such occupation and the maximum length of time any woman worker may be kept at such wages as a learner or apprentice, which wages shall be less than the regular minimum wages recommended for the regular women workers in such



occupation. (Sept. 19, 1918, 40 Stat. 963, ch. 174, § 11.)

**§ 36-411 [19: 222]. Action of Board—Public hearings.**

Upon receipt of any report from any conference, the Board shall consider and review the recommendations, and may approve or disapprove any or all of such recommendations, and may resubmit to the same conference, or a new conference, any subject covered by any recommendations so disapproved.

If the Board approves any recommendations contained in any report from any conference, it shall publish a notice, once a week, for four successive weeks in a newspaper of general circulation printed in the District of Columbia, that it will, on a date and at a place named in the notice, hold a public hearing at which all persons in favor of or opposed to such recommendations will be heard.

After such hearing the Board may, in its discretion, make and render such an order as may be proper or necessary to adopt such recommendations and carry them into effect, requiring all employers in the occupation affected thereby to observe and comply with such order. Such order shall become effective sixty days after it is made. After such order becomes effective, and while it is effective, it shall be unlawful for any employer to violate or disregard any of its terms or provisions, or to employ any woman worker in any occupation covered by such order at lower wages than are authorized or permitted therein.

The Board shall, as far as is practicable, mail a copy of such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room in his establishment in which women workers are employed. (Sept. 19, 1918, 40 Stat. 963, ch. 174, § 12.)

**§ 36-412 [19: 223]. Licenses for less than time-rate standard.**

For any occupation in which only a minimum time-rate wage has been established, the board may issue to a woman whose earning capacity has been impaired by age or otherwise, a special license authorizing her employment at such wage less than such minimum time-rate wage as shall be fixed by the Board and stated in the license. (Sept. 19, 1918, 40 Stat. 963, ch. 174, § 13.)

**§ 36-413 [19: 224]. Determination of minimum wages for minors.**

The board may at any time inquire into wages of minors employed in any occupation in the District of Columbia, and determine suitable wages for them. When the board has made such determination it may make such an order as may be proper or necessary to carry such determination into effect. Such order shall become effective sixty days after it is made; and after such order becomes effective and while it is effective it shall be unlawful for any employer in such occupation to employ a minor at less wages than are specified or required in or by such order. (Sept. 19, 1918, 40 Stat. 963, ch. 174, § 14.)

**CROSS REFERENCE**

See note to § 36-407.

**§ 36-414 [19: 225]. Separate inquiries.**

Any conference may make a separate inquiry into and report on any branch of any occupation, and the board may make a separate order affecting any branch of any occupation. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 15.)

**§ 36-415 [19: 226]. Investigations.**

The board shall from time to time investigate and ascertain whether or not employers in the District of Columbia are observing and complying with its orders, and shall report to the corporation counsel of the District of Columbia all violations of this chapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 16.)

**§ 36-416 [19: 227]. Decisions of fact by board final—Appeals on questions of law.**

All questions of fact arising under the foregoing provisions of this chapter shall, except as otherwise herein provided, be determined by the board, and there shall be no appeal from the decision of the board on any such question of fact; but there shall be a right of appeal from the board to the District Court of the United States for the District of Columbia from any ruling or holding on a question of law included or embodied in any decision or order of the board; and, on the same question of law, from such court to the United States Court of Appeals for the District of Columbia. In all such appeals the corporation counsel shall appear for and represent the board. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 17.)

**§ 36-417 [19: 228]. Penalties for violations.**

Whoever violates this chapter, whether an employer or his agent, or the director, officer, or agent of any corporation, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100 or by imprisonment not less than ten days nor more than three months, or by both such fine and imprisonment. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 18.)

**§ 36-418 [19: 229]. Penalties for discrimination by employer against employee who testifies.**

Any employer and his agent, or the director, officer, or agent of any corporation who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on any conference or has testified or is about to testify, or because such employer believes that said employee may serve on any conference or may testify in any investigation or proceedings under or relative to this chapter shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$100. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 19.)

**§ 36-419 [19: 230]. Employers responsible for acts of agents.**

Any act which, if done or omitted to be done by any agent or officer or director acting for such employer, would constitute a violation of this chapter, shall also be held to be a violation by the employer and subject such employer to the liability provided



for by this chapter. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 20.)

§ 36-420 [19: 231]. Jurisdiction of police court.

Prosecutions for violations of this chapter shall be on information filed in the police court of the District of Columbia by the corporation counsel. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 21.)

§ 36-421 [19: 232]. Civil action to recover if less than minimum wage paid.

If any woman worker is paid by her employer less than the minimum wage to which she is entitled under or by virtue of an order of the board, she may recover in a civil action the full amount of such minimum wage, less any amount actually paid to her by the employer, together with such reasonable attorney's fees as may be allowed by the court; and any agreement for her to work for less than such minimum wage shall be no defense to such action. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 22.)

§ 36-422 [19: 233]. Title and purpose of chapter.

This chapter shall be known as the "District of Columbia Minimum-Wage Law." The purposes of the chapter are to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the chapter in each of its provisions and in its entirety shall be interpreted to effectuate these purposes. (Sept. 19, 1918, 40 Stat. 964, ch. 174, § 23.)

Chapter 5.—WORKMEN'S COMPENSATION

- Sec.  
36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.  
36-502. Exceptions.

§ 36-501 [19: 11]. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

The provisions of title 33, chapter 18, of the Code of Laws of the United States, including all amendments that may be made thereto after May 17, 1928, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)

CROSS REFERENCE

Actions for wrongful death generally, § 16-1201 et seq.

NOTES TO DECISIONS

ACCIDENTAL INJURY

The evidence, particularly the testimony of the physician, justified the deputy commissioner in ruling that the paralysis was the natural result of the accidental injury. *Massachusetts Bonding & Ins. Co. v. Hoage* (63 App. D. C. 89, 69 Fed. (2d) 575).

"Accidental injury" includes any injury which is unexpected or not designed, and just as much includes injury sustained by an employee subject to physical infirmities as injury to one who is strong and robust. *Com-*

*mercial Casualty Ins. Co. v. Hoage* (64 App. D. C. 158, 75 Fed. (2d) 677).

APPEAL

Fact that evidence taken and certified in disregard of technical rules of procedure does not invalidate it or render it any the less entitled to consideration on an appeal when no request was made for a trial de novo. *Georgia Casualty Co. v. Hoage* (61 App. D. C. 195, 59 Fed. (2d) 870).

APPLICATION OF STATUTE

To bring the case within the terms of the Employers' Liability Act, the defendant must have been at the time of the injury engaged as a common carrier in interstate commerce or commerce solely within the District, and the plaintiff-employee must have been employed by a carrier in such commerce or in work so closely related to it as to be practically a part of it. *Poff v. Washington Terminal Co.* (63 App. D. C. 86, 69 Fed. (2d) 572).

There is no substantial reason for denying the District the right to enforce its own law in its own courts, and that in the circumstances the full faith and credit clause does not require that the statutes of Alabama be given effect. *United States Casualty Co. v. Hoage* (64 App. D. C. 284, 77 Fed. (2d) 542).

An intent to bar compensation claims before they arise cannot fairly be imputed to Congress. *Potomac Elec. Power Co. v. Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

Under the United States Employee's Compensation Act an injured employee of the United States has his sole remedy. *Posey v. Tennessee Valley Authority* ((C. C. A. 5), 93 Fed. (2d) 726).

AWARD

Wage-earning capacity of the employee was diminished by reason of the injuries sustained by him in the course of and arising out of his employment. *Hartford Acc. & Indem. Co. v. Hoage* (66 App. D. C. 163, 85 Fed. (2d) 420).

Medical and similar benefits which the employer is required to furnish are not to be counted in applying the \$7,500 limit of "total compensation" payable for death or injury, and it follows that compensation acts are to be "construed liberally in furtherance of the purpose for which they were enacted." *Cardillo v. Liberty Mut. Ins. Co.* (69 App. D. C. 330, 101 Fed. (2d) 254).

When employee had hernia which caused disability, at first apparently temporary but later becoming permanent, this change is sufficient to support the modification of an award. *New Amsterdam Casualty Co. v. Cardillo* (71 App. D. C. 172, 108 Fed. (2d) 492).

CHANGE IN PHYSICAL CONDITION

There was, within the meaning of this section, a change in the injured person's physical condition in relation to the injury, since the condition, which was temporary at one time, had become permanent. *New Amsterdam Casualty Co. v. Cardillo* (71 App. D. C. 172, 108 Fed. (2d) 492).

COMMISSIONER'S FINDING OF FACT

When evidence sustained the deputy commissioner's finding of suicide as opposed to accident, the court should not have disturbed an order denying compensation. *Del Vecchio v. Bowers* (296 U. S. 280, 80 L. Ed. 229, 56 Sup. Ct. 190).

The deputy commissioner's findings of fact, if supported by evidence, are conclusive. *Employers Liability Assur. Corp. v. Hoage* (63 App. D. C. 53, 69 Fed. (2d) 227); *Malone v. Hoage* (64 App. D. C. 38, 73 Fed. (2d) 855); *Maryland Casualty Co. v. Cardillo* (71 App. D. C. 160, 107 Fed. (2d) 959).

Cases in which an order of the Commissioner may be set aside as "not in accordance with law" are only those in which it appears that there is an error of law, or in which the order of the Commissioner is not supported by substantial evidence, as well, of course, in those in which it is arbitrary and unreasonable. *Whitfield v. Hoage* (63 App. D. C. 237, 71 Fed. (2d) 690).

As the question is solely the fact of employment, and, as this fact is an essential condition precedent to the right to make the claim, the proceeding in the court below was entirely proper, and Supreme Court will not overrule lower court unless findings are clearly wrong. *Metro-politan Casualty Ins. Co. v. Hoage* (63 App. D. C. 307, 72 Fed. (2d) 175).



Deputy commissioner was justified in concluding that the death of the deceased arose at least in substantial part from his employment. *London Guarantee & Acc. Co. v. Hoage* (63 App. D. C. 323, 72 Fed. (2d) 191).

Conclusion reached by deputy commissioner upon the facts found by him was contrary to law, and the claim of appellant should have been sustained when he was an employee at the time of the accident, at his place of duty, and engaged in his employment. *Scott v. Hoage* (63 App. D. C. 391, 73 Fed. (2d) 114).

Chain of causation, beginning with the inhalation of the gas and ending in his death, as found by the deputy commissioner, is satisfactorily shown by the evidence. *National Casualty v. Hoage* (64 App. D. C. 33, 73 Fed. (2d) 850).

Findings of the deputy commissioner upon the facts in compensation case are final and conclusive when supported by competent evidence. The act does not authorize the court to reweigh the evidence when more than one inference can be drawn for the purpose of arriving at a different conclusion from the deputy commissioner. *Fulton v. Hoage* (64 App. D. C. 232, 77 Fed. (2d) 110).

Testimony supports the deputy commissioner's finding that the employee was "mentally incompetent" from the time of his injury to the time when his committee was appointed. *Hoage v. Terminal Refrigerating & Warehousing Co.* (65 App. D. C. 5, 78 Fed. (2d) 1009).

Deputy commissioner, when passing upon the extent of injured person's vision, should not have excluded from consideration the assistance which he could receive from the use of glasses. *Washington Terminal Co. v. Hoage* (65 App. D. C. 33, 79 Fed. (2d) 158).

Deputy commissioner is authorized to award compensation using as the basis for his average annual earnings such sum as shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury, having regard to "the previous earnings of the injured employee and of other employees of the same or most similar class." *Hartford Acc. & Indem. Co. v. Hoage* (66 App. D. C. 154, 85 Fed. (2d) 411).

Deputy commissioner and the District Court were within their discretion in finding, in effect, that declarations concerning the injury were corroborated. *Associated General Contractors v. Cardillo* (70 App. D. C. 303, 106 Fed. (2d) 327).

#### CONSTITUTIONALITY

This section does not violate constitutional provision for jury trial. *Rowlette v. Rothstein Dental Laboratories*, (61 App. D. C. 373, 63 Fed. (2d) 150, Cert. den. 289 U. S. 736, 77 L. Ed. 1484, 53 Sup. Ct. 657).

#### DEATH IN THE COURSE OF EMPLOYMENT

In determining whether death arose out of employment, when store manager was accidentally killed by gunshot wound, evidence that his possession of pistol was reasonably necessary for performance of his duties was admissible. *Del Vecchio v. Bowers* (62 App. D. C. 327, 67 Fed. (2d) 751).

Butcher's death which was caused by the violent wrench suffered by him when handling the calf permitting the escape of colon bacilli causing pus, and finally involving the lower lobe of the left lung resulting in pneumonia, was accidental. *Employer's Liability Assur. Corp. v. Hoage* (67 App. D. C. 245, 91 Fed. (2d) 318).

#### EMPLOYER—SUBROGATION—PARTY PLAINTIFF

An employer or an insurance carrier who has paid compensation to the only beneficiary or beneficiaries entitled to receive the same and who has a right of subrogation may bring the subrogation action against the third person who caused the death of the employee, and the action need not be brought by the personal representative of the decedent. *Aetna Life Ins. Co. v. Moses* (287 U. S. 530, 77 L. Ed. 477, 53 Sup. Ct. 231, revg. 57 Fed. (2d) 443).

In case there is more than one dependent and one only elects to accept workmen's compensation and the other dependent or dependents elect to bring an action under the wrongful death statute, then the employer is not entitled to sue as a subrogee but the action must be brought by the personal representative of the decedent, the employee

having the right to demand that such action be brought and that he share in the recovery. *Doleman v. Levine* (295 U. S. 221, 79 L. Ed. 1402, 55 Sup. Ct. 741, revg. 73 Fed. (2d) 842).

#### EVIDENCE TO SUSTAIN AWARD

Where an employee within the provisions of this act is found dead and the evidence on the issue of accident or suicide is evenly balanced, the presumption created by § 20 (d) of the Longshoremen's and Harbor Workers' Compensation Act that the death was not suicidal, has not the quality of affirmative evidence. The presumption may be invoked only where there is an entire lack of competent evidence. *Del Vecchio v. Bowers* (296 U. S. 280, 80 L. Ed. 229, 56 Sup. Ct. 190).

Evidence showed quite clearly that the possession of the pistol was reasonably necessary in the duty which deceased owed to protect his employer's property and his own life. *Del Vecchio v. Bowers* (62 App. D. C. 327, 67 Fed. (2d) 751).

To justify an award there must have been some substantial connection between the alleged accident and the employment. *Hoage v. Liberty Mut. Ins. Co.* (64 App. D. C. 395, 78 Fed. (2d) 874).

The weight of the evidence is for the deputy commissioner and not for the courts under the Compensation Act. *Potomac Elec. Power Co. v. Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

#### INJURIES IN THE COURSE OF EMPLOYMENT

Evidence held sufficient to show that warehouse manager was injured in the course of his employment, when injury occurred while he was on his way to the warehouse on Sunday. *Voehl v. Indemnity Ins. Co.* (288 U. S. 162, 77 L. Ed. 676, 53 Sup. Ct. 380, revg. (61 App. D. C. 173, 58 Fed. (2d) 1074).

Garage employee proved by sufficient evidence to be employee and entitled to compensation for injury. *Lumbermens Mut. Casualty Co. v. Hoage* (61 App. D. C. 171, 58 Fed. (2d) 1072).

Claim for compensation on ground of relationship of employer and employee. Evidence warranted finding that relation was that of partnership. *Georgia Casualty Co. v. Hoage* (61 App. D. C. 195, 59 Fed. (2d) 870).

Newspaper solicitor, when in the course of his employment has to pass along the public streets and thereby sustains an accident by reason of the risks incident to the streets, the accident "arises out of" as well as "in the course of" his employment. *New Amsterdam Casualty Co. v. Hoage* (61 App. D. C. 306, 62 Fed. (2d) 468).

An injury "arises out of" the employment within the meaning of the Compensation Act when it occurs in the course of the employment and as the result of a risk involved in or incidental to the employment or to the conditions under which it is required to be performed. The mere fact that the injury is contemporaneous or coincident with the employment is not a sufficient basis for an award. *Speaks v. Hoage* (64 App. D. C. 324, 78 Fed. (2d) 208).

Injury suffered by an insurance agent, on the way home, when superior ordered him home, was compensatable as occurring in and arising out of the course of employment. *Proctor v. Hoage* (65 App. D. C. 153, 81 Fed. (2d) 555).

Although there were instructions by superior that employee should not touch anything alive, it was not sufficient to prevent action as one "arising out of and in the course of employment," when employee was electrocuted while repairing cylinder on street car. *Capital Transit Co. v. Hoage* (65 App. D. C. 382, 84 Fed. (2d) 235).

When a chef was stabbed by a crazed stranger, the injuries "arose out of and in the course of his employment." *Hartford Acc. & Indem. Co. v. Hoage* (66 App. D. C. 160, 85 Fed. (2d) 417).

Evidence that claim adjuster handled more than 250 cases a month, being a great many in excess of adjuster's monthly capacity, and as a result suffered a severe spasm of angina pectoris which in turn resulted in coronary thrombosis, it was an accidental injury which is any injury unexpected or not designed. *Hoage v. Royal Indem. Co.* (67 App. D. C. 142, 90 Fed. (2d) 387).



An unexpected attack upon a cook in a restaurant who was killed by a bus boy during altercation regarding boy's work "arose out of the employment." *Maryland Casualty Co. v. Cardillo* (69 App. D. C. 199, 99 Fed. (2d) 432).

Injury which the employee received was a direct result of the position in which he was placed by the order of his superior and it therefore arose out of his employment. *Williams v. American Employers Ins. Co.* (71 App. D. C. 153, 107 Fed. (2d) 953).

Injuries sustained by employee while driving automobile owned and kept by employer for employer's personal use, such driving being under the exclusive supervision and control of employer, were injuries arising out of and in the course of employment. *Williams v. American Employers' Ins. Co.* (71 App. D. C. 153, 107 Fed. (2d) 953).

Injury sustained by driver-employee while returning from lunch arose out of and in the course of employment. *Cardillo v. Hartford Acc. & Indem. Co.* (71 App. D. C. 153, 109 Fed. (2d) 674).

Where one employed in a produce warehouse was engaged in loading a truck, and a checker, his superior, addressed him repeatedly as "Shorty" which the loader resented and called his superior a vile name, for which the superior assaulted him, inflicting injuries, the employee is entitled to compensation, the injury having arisen out of, and in course of, his employment. *Hartford Acc. & Indem. Co. v. Cardillo* (71 App. D. C. 330, 112 Fed. (2d) 11).

#### INJURIES OUTSIDE SCOPE OF EMPLOYMENT

Deputy commissioner was right in holding that the injury sustained did not occur in the course of the deceased's employment, when he was not at the time of the occurrence performing any service which he was required to do by virtue of his employment as financial secretary of the lodge. *Morgan v. Hoage* (63 App. D. C. 355, 72 Fed. (2d) 727).

When employee went on roof of building during lunch hour for a rest and fresh air, but fell into a ventilator shaft the injury did not arise "out of the employment." *Monahan v. Hoage* (67 App. D. C. 174, 90 Fed. (2d) 419).

Injuries sustained by an employee in a personal difficulty with another employee of the same employer, having no relation to the employment itself and in which there is no causal connection between the injury and the employment, are not compensable. *Fazio v. Cardillo* (71 App. D. C. 264, 109 Fed. (2d) 835).

#### LIMITATION OF ACTION

When injured employee elected to sue a third person and obtained judgment against tort-feasor, which was reversed, the employee then tried to proceed without paying costs and not being successful tried in forma pauperis, and then discontinued action, it was held that the employee was not entitled to compensation for the statute of limitations had run and employee failed to pursue the third-party remedy to final judgment. *Chapman v. Hoage* (64 App. D. C. 349, 78 Fed. (2d) 233).

Provisions relating to the time within which the claimant shall present and prosecute his claim are essential parts of the procedure. The court accordingly cannot revive a claim when barred by the limitations contained in the act. *Shugard v. Hoage* (67 App. D. C. 52, 89 Fed. (2d) 796).

Where a statute gives a right unknown to the common law, and limits the time within which an action shall be brought to assert it, the limitation defines and controls the right. *Young v. Hoage* (67 App. D. C. 150, 90 Fed. (2d) 395).

Statute of limitations applicable to this case and action must be brought by the personal representative within one year from the date of the death, or the employer must have vested in him within one year from the date of the death of the employee the right of the personal representative to bring such action. *Chapman v. Griffith-Consumers Co.* (71 App. D. C. 64, 107 Fed. (2d) 263).

The limitation does not begin to run until the claim to compensation arises the term "injury" being equivalent to "compensatable injury." *Potomac Elec. Power Co. v. Cardillo* (71 App. D. C. 163, 107 Fed. (2d) 962).

#### PARTIAL DEPENDENCY

A partial dependency falls within the statute as well as a complete or total dependency. *Harris v. Hoage* (62 App. D. C. 275, 66 Fed. (2d) 801).

#### RIGHT OF ACTION

Record clearly shows that the agent of the insurance carrier was a privy to all the proceedings leading to the bringing of the damage suit and its settlement, and it would also be inequitable to permit the employer and carrier to change their position to the prejudice of the claimant who had acquiesced in their position. *Metro-politan Casualty Ins. Co. v. Hoage* (67 App. D. C. 54, 89 Fed. (2d) 798).

Since claimant was an independent contractor, he is not entitled to claim under the Compensation Act as an employee. *Cardillo v. Mockabee* (70 App. D. C. 16, 102 Fed. (2d) 620).

#### SICKNESS AND DISEASE

Findings of fact by deputy commissioner that injury to hip of employee was not proximate cause of pulmonary tuberculosis must be accepted as conclusive if supported by evidence. *Powell v. Hoage* (61 App. D. C. 99, 57 Fed. (2d) 766).

Death from "injuries in the course of employment" is proved by evidence of an epileptic seizure of employee while using hot water hose, which inflicted burns. *Georgetown College v. Stone* (61 App. D. C. 200, 59 Fed. (2d) 875).

Employee not entitled to compensation because contracting tuberculosis while working in a restaurant. *Ayers v. Hoage* (61 App. D. C. 388, 63 Fed. (2d) 364).

When there is evidence of a positive nature, and wholly uncontradicted, which definitely and conclusively traces the cause of death and places it wholly at the door of a fatal disease from which the employee was suffering and wholly away from any relation to the work, then, in such a case, the inference must yield to the actual and deputy commissioner's determination must be set aside. *Liberty Mut. Ins. Co. v. Hoage* (62 App. D. C. 189, 65 Fed. (2d) 822).

From an examination of the testimony, and the presumption of verity which the law accords the findings of fact by the deputy commissioner, the appellant has failed to establish a claim within the Compensation Act, as pneumonia causing death of taxicab driver was not occupational disease. *Anderson v. Hoage* (63 App. D. C. 169, 70 Fed. (2d) 773).

#### SUNSTROKE

Death of laborer from sunstroke while working in sunny street was compensatable. *Fidelity & Casualty Co. v. Burris* (61 App. D. C. 228, 59 Fed. (2d) 1042).

Heat prostration is compensatable as accidental injury if suffered while delivering groceries. *Aetna Life Ins. Co. v. Hoage* (62 App. D. C. 6, 63 Fed. (2d) 818).

#### USUAL COURSE OF BUSINESS

Words "usual course" refer to normal operations constituting the regular business of the employer. *Hoage v. Hartford Acc. & Indem. Co.* (64 App. D. C. 258, 77 Fed. (2d) 381).

#### § 36-502 [19: 12]. Exceptions.

This chapter shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of chapter 15, Title 5, of the Code of the Law of the United States; and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or



other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress. (May 17, 1928, 45 Stat. 600, ch. 612, § 2; June 15, 1938, 52 Stat. 689, ch. 392.)

AMENDMENT

Act of 1938 added clause (5).

STATUTORY REFERENCE

See U. S. C., title 33, ch. 18.

NOTES TO DECISIONS

CASUAL EMPLOYMENT

Death of ornamental ironworker resulting from accident while repairing door in grillwork was while engaged in "casual employment," and not in usual course of employer's business. *Hoage v. Hartford Acc. & Indem. Co.* (64 App. D. C. 258, 77 Fed. (2d) 381, Cert. den. 296 U. S. 609, 80 L. Ed. 432, 56 Sup. Ct. 128).



## TITLE 37.—LIBRARIES

Chap.	Sec.
1. Public libraries-----	37-101

### Chapter 1.—PUBLIC LIBRARIES

Sec.	
37-101.	Public library established—Authority of Commissioners—Acceptance of gifts.
37-102.	Branch libraries.
37-103.	Persons entitled to use of library—Deposit of fees.
37-104.	Board of trustees—Appointment and tenure.
37-105.	Duties—Librarian and employees—Annual report.
37-106.	Submission of estimates.
37-107.	Takoma Park branch—Hours of opening.
37-108.	Appropriation for expenditures.
37-109.	Transfer of miscellaneous books to District public library.
37-110.	Advancement of funds for purchase of books, pamphlets, and periodicals.

#### § 37-101 [20: 1421]. Public library established—Authority of Commissioners—Acceptance of gifts.

A free public library is hereby established and shall be maintained in the District of Columbia, which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the District of Columbia, and the commissioners of the said District are authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library; and the commissioners of said District are further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to them. (June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1.)

#### AMENDMENT

The second sentence was added by the act of April 1, 1926.

#### SUITS AGAINST LIBRARY TRUST FUND BOARD

The board may be sued in the District Court of the United States for the District of Columbia, which is hereby given jurisdiction of such suits, for the purpose of enforcing the provisions of any trust accepted by it. (Mar. 3, 1925, 43 Stat. 1108, ch. 423, § 3; June 25, 1936, 49 Stat. 1921, ch. 804.)

#### § 37-102 [20: 1422]. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries provided for in section 37-101, the board of library trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the

said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in separate buildings. The board of library trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations. (June 3, 1896, ch. 315, § 2 (new), as added Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2.)

#### § 37-103 [20: 1423]. Persons entitled to use of library—Deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of said library, including the use of the books contained therein, as a lending or circulating library, subject to such rules and regulations as may be lawfully established in relation thereto. Persons living outside of the said District, but having regular business or employment or attending school in the said District, shall for the purpose of sections 37-101 to 37-106 be deemed temporary residents. Other persons residing in counties of Maryland and Virginia adjacent to the said District may gain the privilege of withdrawing books from the said library by the payment of fees fixed by the board of library trustees hereinafter provided. All fees shall be paid weekly to the collector of taxes of the District of Columbia for deposit in the Treasury of the United States to the credit of said District of Columbia. (June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3.)

#### AMENDMENT

The 1926 amendment added the last three sentences of this section.

#### § 37-104 [20: 1424]. Board of trustees—Appointment and tenure.

The said library shall be in charge of a board of library trustees, who shall purchase the books, magazines, and newspapers and procure the necessary appendages for such library. The said board of trustees shall be composed of nine members, each of whom shall be a taxpayer in the District of Columbia, and shall serve without compensation. They shall be appointed by the commissioners of the District of Columbia and shall hold office for six years. Any vacancy occurring in said board shall be filled by the District commissioners. Said board shall have power to provide such regulations for its organization and government as it may deem necessary. (June 3, 1896, 29 Stat. 244, ch. 315, § 3; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4.)

#### AMENDMENT

The 1926 amendment omitted a proviso and sentence which originally followed the third sentence: "Provided,



That at the first meeting of the said board the members shall be divided by lot into three classes. The first class, composed of three members, shall hold office for two years; the second class, composed of three members, shall hold office for four years; the third class, composed of three members, shall hold office for six years."

**§ 37-105 [20: 1425]. Duties—Librarian and employees—Annual report.**

The said board shall have power to provide for the proper care and preservation of said library, to prescribe rules for taking and returning books, to fix, assess, and collect fines and penalties for the loss or injury to books, and for the retention of books beyond the period fixed by library regulations, and to establish all other needful rules and regulations for the management of the library as the said board shall deem proper. All fines and penalties so collected shall after June 30, 1927, be paid weekly to the collector of taxes of the District of Columbia for deposit in the treasury of the United States to the credit of said District of Columbia. The said board of trustees shall appoint a librarian to have the care and superintendence of said library, who shall be responsible to the board of trustees for the impartial enforcement of all rules and regulations lawfully established in relation to said library. The said librarian shall appoint such assistants as the board shall deem necessary to the proper conduct of the library. The said board of library trustees shall make an annual report to the commissioners of the District of Columbia relative to the management of the said library. (June 3, 1896, 29 Stat. 244, ch. 315, § 4; Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5.)

**AMENDMENT**

The 1926 amendment inserted in the first sentence the words "and for the retention of books beyond the period fixed by library regulations," and added the second sentence.

**CROSS REFERENCES**

Library Trust Fund Board, suits against, see note to § 37-101.

Monthly advancement to purchase books and periodicals, § 37-110.

Penalty for stealing or injuring books, § 22-3106.

Rules and regulations generally, § 1-226 and notes.

**§ 37-106 [20: 1426]. Submission of estimates.**

Said commissioners of the said District are authorized to include in their annual estimates for appropriations such sums as they may deem necessary for the proper maintenance of said library, including branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings. (June 3, 1896, ch. 315, § 6 (new), as added Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6.)

**§ 37-107 [20: 1427]. Takoma Park branch—Hours of opening.**

The Takoma Park branch shall be kept open at least seven hours per day on the same week days as the free Public Library shall be open to the public. (Mar. 4, 1913, 37 Stat. 943, ch. 150.)

**§ 37-108 [20: 1428]. Appropriation for expenditures.**

The appropriation for the expenses of the Takoma Park branch of the Public Library shall not exceed in any one year the sum of ten per centum of the total costs of such branch library building. (Apr. 4, 1910, 36 Stat. 290, ch. 141.)

**§ 37-109 [20: 1429]. Transfer of miscellaneous books to District public library.**

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the free public library of the District of Columbia, be turned over to that library for general use as a part thereof. (Feb. 25, 1903, 32 Stat. 865, ch. 755, § 1.)

**STATUTORY REFERENCE**

This section is in U. S. C., title 5, § 110.

**LIBRARIES**

The Librarian of Congress may from time to time transfer to other governmental libraries within the District of Columbia, including the Public Library, books and material in the possession of the Library of Congress in his judgment no longer necessary to its uses, but in the judgment of the custodians of such other collections likely to be useful to them, and may dispose of or destroy such material as has become useless. (Mar. 4, 1909, 35 Stat. 858, ch. 297.)

**§ 37-110 [20: 643a]. Advancement of funds for purchase of books, pamphlets, and periodicals.**

The disbursing officer of the District of Columbia is authorized to advance to the librarian of the Free Public Library, upon requisition previously approved by the auditor of the District of Columbia, sums of money not exceeding \$25 at the first of each month, to be expended for the purchase of certain books, pamphlets, numbers of periodicals or newspapers, or other printed material, and to be accounted for on itemized vouchers. (June 12, 1940, 54 Stat. —, ch. 333, § 1.)

**COMPILER'S NOTE**

This section is a part of the appropriation act for the District of Columbia and merely repeats a provision appearing in prior appropriation acts for the District. It appeared in supplements to the 1929 Code as § 643a of title 20, which relates to revenue and taxation, and is retained in that title as § 47-118 herein.



## TITLE 38.—LIENS

Chap.	Sec.	
1. Mechanics, materialmen, and contractors	38-101	
2. Garage keepers and liverymen	38-201	
3. Hospitals	38-301	

### Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

Chap.	Sec.	
38-101. Mechanic's lien.		
38-102. Notice.		
38-103. Subcontractor.		
38-104. Conditions.		
38-105. Notice to owner.		
38-106. Owner's duty.		
38-107. Subcontractor entitled to know terms of contract.		
38-108. Advance payments.		
38-109. Priority of lien.		
38-110. How lien enforced.		
38-111. Decree of sale.		
38-112. Subcontractor preferred to contractor.		
38-113. Distribution.		
38-114. Several buildings.		
38-115. When suit to be commenced.		
38-116. Extent of ground bound by lien.		
38-117. Entry of satisfaction.		
38-118. Payment into court and release.		
38-119. Undertaking to discharge liens before suit.		
38-120. Decree against sureties.		
38-121. No action by subcontractor against owner.		
38-122. Judgment for deficiency upon a sale.		
38-123. Wharves and lots.		
38-124. Artisans' lien.		
38-125. Enforcement by sale.		
38-126. Enforcement by bill in equity.		

#### § 38-101 [25:351]. Mechanic's lien.

Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached: *Provided*, That the person claiming the lien shall file the notice herein prescribed. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237.)

#### CROSS REFERENCES

Artisan's lien, § 38-124 et seq.  
 Hotel or boarding house-keeper's lien, § 34-103.  
 Landlord Lien, §§ 45-915, 45-916.  
 Lien on goods under Uniform Sales Act, §§ 28-1401 to 28-1411.

Lien on lands for funds donated by the United States to purchase such lands for charitable or reformatory purposes upon abandonment of purpose, § 32-1003.  
 Motor Vehicle Lien Law, §§ 40-701 to 40-715.  
 Warehouseman's lien, § 28-1921 et seq.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

The provision of the code with respect to mechanic's liens is "fundamentally the same as in the former statute." *Lipscomb v. Hough* (52 App. D. C. 313, 286 Fed. 775).

##### CONTRACT OF LESSEE

Lessee held to be agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean v. Nolan* (44 App. D. C. 1).

"Nor does a covenant in the lease, vesting in the lessor title in the buildings, and improvements erected on the premises at the termination of the lease, create the relation of principal and agent between the lessor and lessee." *Lipscomb v. Hough* (52 App. D. C. 313, 286 Fed. 775), citing *Albaugh v. Litho-Marble Decorating Co.* (14 App. D. C. 113), *Langley v. D'Audigne* (31 App. D. C. 409).

"A builder contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee and not the owner, is estopped to complain of ignorance of the terms of the lease, where as here, it was a matter of public record." *Lipscomb v. Hough* (52 App. D. C. 313, 286 Fed. 775).

##### CONTRACT OF OWNER

"In the latter case, the statutes relative to mechanics' liens \* \* \* are reviewed at length with the conclusion that a lien upon the premises can only be imposed where the building is erected or repaired at the instance of the owner or his agent. If the work is done and materials furnished at the instance of a lessee, or tenant for life, or years, or a person having an equitable interest therein, the lien can only extend to the interest of the lessee, tenant, or equitable owner." *Lipscomb v. Hough* (52 App. D. C. 313, 286 Fed. 775).

##### STATUS OF PARTIES

The status of the parties at the time of the contract determines the question of the right to a lien. *Deming v. Wardman Constr. Co.* (59 App. D. C. 254, 39 Fed. (2d) 504).

##### STATUTORY CONSTRUCTION

A mechanic's lien is purely a creature of statute. "The performance of the work, or the furnishing of the materials, gives merely a right to acquire a lien. The statute prescribes the steps necessary to perfect it. These requirements relate to the remedy rather than the right." "In determining whether a right to a lien exists, the statute should be strictly construed against one claiming such right, \* \* \* but \* \* \* where the right to a lien clearly appears, and the sole question to be determined is whether the claimant has proceeded properly to acquire and establish his lien, the statute should be liberally construed in his favor." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (35 App. D. C. 1), citing *James B. Lambie Co. v. Bigelow* (34 App. D. C. 49). See also *Columbia Brick Co. v. District of Columbia* (1 App. D. C. 351); *Alfred Richards Brick Co. v. Atkinson* (16 App. D. C. 462); *Alfred Richards Brick Co. v. Trott* (23 App. D. C. 284) (holding that a single mechanic's lien should cover no more than a single building, except in a case where there are two or more buildings joined together and owned by a single person).

In determining whether a right to a lien exists, the statute should be strictly construed; but where the right to a lien is clear and the question is whether the claimant



has proceeded properly, the statute should be liberally construed in his favor. *Deming v. Wardman Constr. Co.* (59 App. D. C. 254, 39 Fed. (2d) 504).

#### SUBSTANTIAL PERFORMANCE

In a proceeding to foreclose a mechanic's lien, a contractor who intentionally fails to perform the contract according to its terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner v. Henning* (49 App. D. C. 183, 262 Fed. 637).

#### WAIVER

Taking of security generally operates as waiver of right to mechanic's lien, but a mere agreement to take such security, not carried into effect, does not operate as a waiver. *McMurray v. Brown* (91 U. S. 257, 23 L. Ed. 321, decided under 11 Stat. 376, ch. 17).

§ 38-102 [25: 352]. Notice.

Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the office of the clerk of the District Court of the United States for the District during the construction or within three months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said clerk shall file said notice and record the same in a book to be kept for the purpose. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238.)

#### NOTES TO DECISIONS

##### COMPLETION

Question of completion or noncompletion should be determined by what the common intelligence and the common usage regard as completion, always, of course, with reference to the provisions of the building contract. At the same time no amount of work is too small, the completion of which is required to prevent the consummation of a fraud. *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

The abandonment of the work by the original contractor is deemed in law to be a completion of it for the purpose of filing mechanics' liens by subcontractors and materialmen. *Harper v. Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

##### DISTINCT AND SEPARATE NOTICES

Two or more distinct and separate notices of lien may be comprised in one single instrument of writing; and two or more notices of lien may be enforced in one and the same proceeding in equity where the parties may be the same. Dicta in *Alfred Richards Brick Co. v. Trott* (23 App. D. C. 284).

##### "ELEVATOR" DEFINED

Electric passenger elevator is both an engine and machine; and whether its motive power be electricity, water or steam, can make no difference in the contemplation of the statute, subjecting building to a lien under Mechanics' Lien Law. *Lefler v. Forsberg* (1 App. D. C. 36).

##### INTEREST IN PROPERTY

All persons concerned or interested in the estate are to be at least constructively notified of the interest in the property and the name against which the lien is claimed. *Chamberlain Metal Weather Strip Co. v. Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

#### NAMING WRONG PERSON

Notice of mechanic's lien naming wrong person as owner is invalid. *Chamberlain Metal Weather Strip Co. v. Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

#### PURPOSE OF LIEN

The purpose of mechanic's lien laws is to protect by the property those who contribute to its value by labor or materials, and it is only by compliance with statutory requirements that this can be accomplished. *Chamberlain Metal Weather Strip Co. v. Karrick* (60 App. D. C. 316, 53 Fed. (2d) 928).

#### REQUISITES

"It is apparent that, under the statute, three essential averments are necessary to constitute a valid notice. These are, first, the amount claimed; second, the name of the party against whose interest the lien is claimed; and, third, a description of the property to be charged." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.* (35 App. D. C. 1).

#### TIME FOR FILING

A mechanic's lien, if filed by an original contractor, must be filed either during the construction of the improvement or within three months after its completion. *Harper v. Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

§ 38-103 [25: 353]. Subcontractor.

Any person directly employed by the original contractor, whether as subcontractor, material man, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the clerk of the District Court of the United States for the District to that above mentioned, subject, however, to the conditions set forth in sections 38-104 to 38-122. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239.)

#### CROSS REFERENCES

See note to § 38-107. *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

See note to § 38-118. *Woodward and Lothrop v. Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

Prior to code, see *Leitch v. Emergency Hosp.* (6 App. D. C. 247); *Herrell v. Donovan* (7 App. D. C. 322); *Sommerville v. Williams* (12 App. D. C. 520); *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

##### MATERIALMEN AS CONTRACTORS

Materialmen held to be contractors under § 1237 (§ 38-101), and not subcontractors under this section. *McLean v. Nolan* (44 App. D. C. 1).

#### WAIVER

Subcontractors who waive their remedy under the mechanic's lien statute at the instance of the owner, who refuses to pay the contractor until such releases are executed, cannot, in the absence of fraud, have the release set aside and the lien reinstated, when it appears that the amount paid the contractor was insufficient to pay the subcontractors in full. *Stevens v. Gordon* (48 App. D. C. 604).

§ 38-104 [25: 354]. Conditions.

All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by rea-



son of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240.)

#### § 38-105 [25: 355]. Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the clerk of the District Court of the United States for the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241.)

#### NOTES TO DECISIONS

##### CITED

*Harper v. Galliher & Huguely* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

#### § 38-106 [25: 356]. Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agents as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242.)

#### CROSS REFERENCE

See note to § 38-107.

#### NOTES TO DECISIONS

##### CONTRACTOR PAID IN FULL

Where the owner pays the contractor in full, without notice of subcontractor's right, the subcontractor has no lien upon moneys subsequently accruing to contractor's surety who completes the work under the power reserved to it in the bond. *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

##### LIMITATION OF RIGHTS

"The statute limits the right of a subcontractor to a lien upon money due the contractor from the owner at the time notice is given the owner." *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

##### SUBCONTRACTOR'S RIGHTS

Subcontractor's rights are "dependent on the contract between the owner and the builder and on the state of the accounts between them; and \* \* \* the subcontractors were bound by all the terms and conditions of that contract." But the subcontractor is equally entitled to the benefits of the contract as far as it inures to his

advantage. *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

#### § 38-107 [25: 357]. Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or wilfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243.)

#### CROSS REFERENCE

See notes to § 38-106.

#### NOTES TO DECISIONS

##### SUBCONTRACTOR'S KNOWLEDGE OF TERMS

"The subcontractor should acquaint himself with the terms and conditions of the building contract. This information is made available by statute \* \* \*. In the absence of anything to the contrary, we must assume that the plaintiff possessed this information." *Winter v. Hazen-Latimer Co.* (42 App. D. C. 469).

#### § 38-108 [25: 358]. Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244.)

#### CROSS REFERENCE

See note to § 38-106. *Riggs Fire Ins. Co. v. Shedd* (16 App. D. C. 150).

#### § 38-109 [25: 359]. Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within ten days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall



have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this act shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245.)

#### NOTES TO DECISIONS

##### WHEN LIEN ATTACHES

Mechanic's lien attaches at commencement of work and sale thereafter does not affect validity. *Deland v. Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

The mechanic's lien attached upon the property at the time of the commencement of the work upon the building, but was subordinate to two deeds of trust previously executed. *Deland v. Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

#### § 38-110 [25: 360]. How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the clerk, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246.)

##### CROSS REFERENCE

Joinder of parties, see notes to § 13-401.

##### RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

If claim filed under law as it existed prior to act of Congress of 2d of July, 1884, it should have been made out against the former owner of the property with whom contract was made and not against subsequent purchaser. *Lefler v. Forsberg* (1 App. D. C. 36).

There is no doubt of the right of the mortgagees and others acquiring an interest in the property against which the lien is sought to be enforced, to require and insist upon strict proof of everything that is essential to maintain the lien. *Brown v. Waring* (1 App. D. C. 378).

Burden is on plaintiffs to show by clear proof, when the buildings were commenced, the nature and character of the work and materials furnished and the time when the

buildings were completed; and the failure to establish these facts, to a reasonable intent, will cause the plaintiffs to fail in their claim to a lien. *Brown v. Waring* (1 App. D. C. 378).

Sworn answer of defendant made it necessary for complainant to prove all allegations of bill which includes filing of notice of lien in the manner and within time prescribed by statute. *Landvoight v. Melovich* (1 App. D. C. 498).

To enforce mechanics' liens although a personal judgment can only be enforced against party who incurred debt, still a personal decree by subcontractors against the owner of the property as well as original contractor is proper, especially where record shows an unexpended balance in owner's hands more than enough to pay claims of subcontractors. *Emack v. Rushenberger* (8 App. D. C. 249).

It has never been the practice for persons holding or claiming mechanics' liens, who have been made defendants, to take affirmative action as a prerequisite for their participation in the fund to be realized by the suit. *Emack v. Campbell* (14 App. D. C. 186).

Notices of lien should specifically set forth the amount claimed and not the items that go to make up that amount. *Emack v. Campbell* (14 App. D. C. 186).

##### IN GENERAL

This section provides means for the enforcement of such liens only when filed within the limitations of the statutes. *Harper v. Galliher* (58 App. D. C. 252, 29 Fed. (2d) 452, cert. den. 278 U. S. 657, 73 L. Ed. 565, 49 Sup. Ct. 185).

##### BILL IN EQUITY

A bill in equity is proper proceeding to enforce mechanics' lien against trustees under deed of trust. *Roth v. Eisinger Mill & Lbr. Co.* (63 App. D. C. 128, 70 Fed. (2d) 294).

##### REINSURANCE AGREEMENTS

Reinsurers are liable to materialmen upon the first reinsurance agreements. *Bruckner-Mitchell v. Sun Indem. Co.* (65 App. D. C. 178, 82 Fed. (2d) 434).

Fact that payment, under the reinsurance agreements, is to be made to the District of Columbia is not conclusive that only such a default under the bond as would affect the District in its own right, as distinguished from such a default as affects materialmen, is intended to be covered by the reinsurance agreements. *Bruckner-Mitchell v. Sun Indem. Co.* (65 App. D. C. 178, 82 Fed. (2d) 434).

##### SUBCONTRACTOR ENTITLED TO LIEN

Under § 1239 (§ 38-103) a subcontractor is entitled to a mechanic's lien, which must be enforced by a bill in equity. *Woodward v. Union Trust Co.* (49 App. D. C. 178, 262 Fed. 627).

#### § 38-111 [25: 361]. Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247.)

#### § 38-112 [25: 362]. Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248.)



## § 38-113 [25: 363]. Distribution.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying thereout the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249.)

## § 38-114 [25: 364]. Several buildings.

In case of labor done or materials furnished for the erection or repair of two or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250.)

## CROSS REFERENCE

See note to § 38-101. *Alfred Richards Brick Co. v. Trott* (23 App. D. C. 284).

## NOTES TO DECISIONS

## SEPARATE NOTICES

Where each lienor filed separate notices of lien, each in the full amount due, against each of the two lots, trustees under deed of trust were not prejudiced by release of the lien on one lot. *Roth v. Eisinger Mill & Lbr. Co.* (63 App. D. C. 128, 70 Fed. (2d) 294).

## WHOLE ROW OF BUILDINGS

Where the contract to erect a row of buildings related to the row as an entirety and not to the particular buildings separately, the whole row was a building in the meaning of the mechanic's lien statute, from having been thus united by the parties in one contract, as one general piece of work, and the lien could be claimed on the whole row of buildings. *Phillips v. Gilbert* (101 U. S. 721, 25 L. Ed. 833, decided under 11 Stat. 376, ch. 17).

## § 38-115 [25: 365]. When suit to be commenced.

Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within six months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within three months after the said claim shall have become due. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251.)

## § 38-116 [25: 366]. Extent of ground bound by lien.

If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evi-

dence and describe the same in the decree of sale. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252.)

## § 38-117 [25: 367]. Entry of satisfaction.

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit fifty dollars to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253.)

## § 38-118 [25: 368]. Payment into court and release.

In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with two or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least two days' notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254.)

## CROSS REFERENCE

Payment into court, § 16-1401 and notes.

## NOTES TO DECISIONS

## BOND FILED

Where bond is filed by purchaser of realty, for release of mechanic's lien, the suit to foreclose the lien is properly dismissed. *Maatico v. Fletcher* (59 App. D. C. 250, 39 Fed. (2d) 295).

Upon the filing and approval of the undertaking of the owner and his surety, the property was released from the operation of the mechanics' lien. *Deland v. Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

## NOTICE NOT REQUIRED

"It will be observed that no notice is required under section 1254 (this section), where a money payment is made by the owner; the theory evidently being that cash speaks for itself, and that no one possibly could be prejudiced by the substitution of cash for the obligation of the owner to pay the amount due under the contract. It was for this reason that section 1255 (§ 38-119) makes no mention of a cash payment." *Woodward v. Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

## PAYMENT INTO COURT OF SUM EQUAL TO LIEN

"The evident purpose of sections 1254 and 1255 (this section and § 38-119) is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the



payment into court of a sum equal to the amount of the lien with interest and costs, or the filing of an undertaking to cover that amount. Where admittedly an amount is due the principal contractor, and the lien is asserted by a subcontractor, there is no contest between the owner and the subcontractor; the issue being restricted to the contractor and subcontractor. If the owner does not take advantage of these provisions of the code for the release of the lien, the statute imposes upon him no duty to notify the contractor of the pendency of the subcontractor's suit." *Woodward v. Union Trust Co.* (49 App. D. C. 173, 262 Fed. 627).

#### § 38-119 [25: 369]. Undertaking to discharge liens before suit.

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255.)

##### CROSS REFERENCE

See notes to § 38-118.

#### § 38-120 [25: 370]. Decree against sureties.

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256.)

##### CROSS REFERENCE

Joinder of parties, see notes to § 13-401.

##### NOTES TO DECISIONS

###### OWNER AND SURETY; DECREE AGAINST

Where owner and his surety had filed an undertaking and had thereby released the mechanics' lien, the decree was properly rendered against said owner and surety. *Deland v. Wagner* (62 App. D. C. 54, 64 Fed. (2d) 552).

#### § 38-121 [25: 371]. No action by subcontractor against owner.

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257.)

##### NOTES TO DECISIONS

###### IN GENERAL

This section is applicable although the owner's contract with the contractor and the latter's contract with the subcontractor were to be performed in Maryland. *Mathews v. Libbey* (42 App. D. C. 272).

#### § 38-122 [25: 372]. Judgment for deficiency upon a sale.

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the prop-

erty affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258.)

##### NOTES TO DECISIONS

###### FORMER OWNERS LIABLE

Where property was sold under a deed of trust, it was properly held that a personal judgment for the deficiency should be rendered against the former owners who contracted for the repairs. *Davidson v. E. F. Brooks Co.* (46 App. D. C. 457, cert. den. 245 U. S. 665, 62 L. Ed. 538, 38 Sup. Ct. 63). See also *Emack v. Rushenberger* (8 App. D. C. 249); *McCarthy v. Holtman* (19 App. D. C. 150).

#### § 38-123 [25: 373]. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as provided in section 38-110. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259.)

#### § 38-124 [25: 374]. Artisans' lien.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260.)

#### § 38-125 [25: 375]. Enforcement by sale.

If the amount due and for which a lien is given by section 38-124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

#### § 38-126 [25: 376]. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand



against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

## Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

### Sec.

- 38-201. Lien of garage keepers and liverymen.
- 38-202. Enforcement of lien by sale.
- 38-203. Enforcement of lien by bill in equity.

### § 38-201 [13: 4]. Lien of garage keepers and liverymen.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid: *Provided, however*, That notice in writing shall first be given to such owner in person or at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. Garage keepers shall also have a lien for their charges for storage, repairs, and supplies of or concerning motor vehicles, when such charges are incurred by an owner or conditional vendee of such motor vehicles, and may detain such motor vehicles at any time they may have lawful possession thereof, after giving a notice similar to that provided for liverymen. If said charges are not paid in thirty days said lien may be enforced in the manner provided in section 38-203. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1262; Apr. 19, 1920, 41 Stat. 568, ch. 153.)

#### AMENDMENT

The 1920 amendment added the last two sentences.

#### CROSS REFERENCE

Motor vehicle title liens, §§ 40-701 to 40-715.

#### NOTES TO DECISIONS

##### IN GENERAL

Congress, in amending this section, seems to have taken notice that motor vehicles are sold frequently upon conditional sale contracts, and accordingly provided for a lien in favor of garage keepers, where the charges are incurred either by the owner or the conditional vendee. *Barrett v. Commercial Credit Co.* (54 App. D. C. 249, 296 Fed. 996).

The very fact that the statute awards a lien for work done or materials furnished at the instance of the conditional vendee, and in view of the further fact that the automobile business is largely conducted upon a credit basis, by which dealers protect themselves through conditional sales agreements, are indicative of the legislative intent to give such a lien priority over the conditional bill of sale. *Barrett v. Commercial Credit Co.* (54 App. D. C. 249, 296 Fed. 996).

### § 38-202 [13: 5]. Enforcement of lien by sale.

If the amount due and for which a lien is given by section 38-201 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the

remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263.)

#### CROSS REFERENCE

Hotel, boarding-house, and lodginghouse keepers' liens, § 34-103.

### § 38-203 [13: 6]. Enforcement of lien by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264.)

## Chapter 3.—HOSPITALS

### Sec.

- 38-301. Hospitals to have lien for services on recovery in accident cases.
- 38-302. Notice to be filed.
- 38-303. Liability for not paying hospital amount of its lien.
- 38-304. Permission to examine hospital records.
- 38-305. Clerk to provide lien docket.

### § 38-301 [24: 22]. Hospitals to have lien for services on recovery in accident cases.

Every association, corporation, or other institution maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided*, That the lien herein set forth shall not be applied or considered valid against any one suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District. (June 30, 1939, 53 Stat. 990, ch. 255, § 1.)

#### COMPILER'S NOTE

Evidently the acts above referred to are the federal laws providing compensation for injured governmental employees, which are made applicable to District employees by U. S. C., title 5, § 794, and the Workmen's Compensation Act for the District, §§ 36-501, 36-502, which make the Longshoremen's and Harbor Workers' Compensation Act (U. S. C., title 33, §§ 901-950) applicable to the District.

### § 38-302 [24: 23]. Notice to be filed.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or



corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the District Court of the United States for the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained. (June 30, 1939, 53 Stat. 990, ch. 255, § 2.)

**§ 38-303 [24: 24]. Liability for not paying hospital amount of its lien.**

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was en-

titled to receive as aforesaid; and any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. (June 30, 1939, 53 Stat. 990, ch. 255, § 3.)

**§ 38-304 [24: 25]. Permission to examine hospital records.**

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body maintaining such hospital for the purpose of ascertaining the basis for such lien. (June 30, 1939, 53 Stat. 991, ch. 255, § 4.)

**§ 38-305 [24: 26]. Clerk to provide lien docket.**

The clerk of the District Court of the United States for the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and the clerk shall charge such reasonable fees, not to exceed the sum of \$1, as the court may by rule fix for the recording, indexing, and the releasing of the lien so filed. (June 30, 1939, 53 Stat. 991, ch. 255, § 5.)



## TITLE 39.—MILITARY

Chap.	Sec.
1. Composition, organization, and control-----	39-101
2. Commissioned officers-----	39-201
3. Noncommissioned officers-----	39-301
4. Enlisted personnel-----	39-401
5. Armament, equipment, and supplies-----	39-501
6. Active military duty-----	39-601
7. Courts-martial-----	39-701
8. Pay and allowances-----	39-801
9. Miscellaneous provisions-----	39-901

### Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

Sec.
39-101. Militia—Persons to be enrolled.
39-102. Exemptions from service.
39-103. Assessors to make list of persons liable to enrolment.
39-104. Duty of enrolled militia.
39-105. Ordering enrolled militia into service.
39-106. Organized militia—Volunteer service—Designation.
39-107. Organization of National Guard units.
39-108. Reserve corps—Organization—Composition.
39-109. Government employees—Leaves of absence.
39-110. Government employees ordered to duty—Restoration to Government position.
39-111. Disbanding companies below minimum strength.
39-112. President to be Commander in Chief.

#### § 39-101 [20: 1441]. Militia—Persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section 39-102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1.)

#### COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### STATUTORY REFERENCE

See U. S. C., title 32.

#### § 39-102 [20: 1442]. Exemptions from service.

In addition to the persons exempted from enrolment in the militia by the general laws of the United States, the following persons shall also be exempted from enrolment in the militia of the District of Columbia, namely: Officers of the government of the

District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire departments. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

#### § 39-103 [20: 1443]. Assessors to make list of persons liable to enrolment.

The commissioners of the District of Columbia shall provide for the enrolment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrolment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrolment they shall furnish the commanding general of the militia with a copy of the same. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

#### § 39-104 [20: 1444]. Duty of enrolled militia.

The enrolled militia shall not be subjected to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

#### § 39-105 [20: 1445]. Ordering enrolled militia into service.

Whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5.)



## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-106 [20: 1452]. Organized militia—Volunteer service—Designation.

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10.)

## AMENDMENT

Prior to the 1909 amendment, this section provided: "That the active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service."

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-107 [20: 1453]. Organization of National Guard units.

Except as otherwise specifically provided by law, the organization of the National Guard, including the composition of all units thereof, shall be the same as that which is or may after June 3, 1916, be prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of War. And the President may prescribe the particular unit or units, as to branch or arm of service, to be maintained in each state, territory, or the District of Columbia in order to secure a force which, when combined, shall form complete higher tactical units. (June 3, 1916, 39 Stat. 197, ch. 134, § 60.)

## COMPILER'S NOTES

The act of June 15, 1933, 48 Stat. 156, ch. 87, § 6, amended the above section by adding thereto the following proviso: "Provided, That no change in allotment, branch, or arm of units or organizations wholly within a single State will be made without the approval of the Governor of the State concerned."

Section 11 of the act of 1889, 25 Stat. 774, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, is deemed to have been superseded by this section. Sections 12-17 of the above-mentioned act were repealed by the act of Feb. 18, 1909, 35 Stat. 630, ch. 146.

## CROSS REFERENCE

System of discipline and field exercise, § 39-904.

## STATUTORY REFERENCES

As to the composition of the National Guard, U. S. C., title 32, §§ 4 and 4a, provide as follows:

"*National Guard of States, Territories, and District of Columbia; composition.*—The National Guard of each State, Territory, and the District of Columbia shall consist of members of the militia voluntarily enlisted therein, who upon original enlistment shall be not less than eighteen nor more than forty-five years of age, or who in subsequent enlistment shall be not more than sixty-four years of age, organized, armed, equipped, and federally recognized as hereinafter provided, and of commissioned officers and warrant officers who are citizens of the United States between the ages of twenty-one and sixty-four years: *Provided*, That former members of the Regular Army, Navy or Marine Corps under sixty-four years of age may enlist in said National Guard. (June 3, 1916, ch. 134, § 58, 39 Stat. 197; Feb. 28, 1925, ch. 371, § 1, 43 Stat. 1075; June 15, 1933, ch. 87, § 5, 48 Stat. 155.)

"*National Guard of United States; establishment; composition.*—The National Guard of the United States is hereby established. It shall be a reserve component of

the Army of the United States and shall consist of those federally recognized National Guard units, and organizations, and of the officers, warrant officers, and enlisted members of the National Guard of the several States, Territories, and the District of Columbia, who shall have been appointed, enlisted and appointed, or enlisted, as the case may be, in the National Guard of the United States, as hereinafter provided, and of such other officers and warrant officers as may be appointed therein as provided in section 111 hereof [§ 81 of this title]: *Provided*, That the members of the National Guard of the United States shall not be in the active service of the United States except when ordered thereto in accordance with law, and, in time of peace, they shall be administered, armed, uniformed, equipped, and trained in their status as the National Guard of the several States, Territories, and the District of Columbia, as provided in this title: *And provided further*, That under such regulations as the Secretary of War shall prescribe, noncommissioned officers, first-class privates, and enlisted specialists of the National Guard may be appointed in corresponding grades, ratings, and branches of the National Guard of the United States, without vacating their respective grades and ratings in the National Guard.

"*And provided further*, That in the grades of first lieutenant and second lieutenant the number shall be unlimited. (June 3, 1916, ch. 134, § 58, 39 Stat. 197; June 15, 1933, ch. 87, § 5, 48 Stat. 155; June 19, 1935, ch. 277, § 2, 49 Stat. 391.)"

§ 39-108 [20: 1512]. Reserve corps—Organization—Composition.

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the Navy, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States: *Provided*, That the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States: *Provided further*, That when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 72.)

## COMPILER'S NOTES

Section 73 of the act of 1909, relating to exemption from jury service of officers and enlisted men is compiled herein as § 11-1420.

Section 74 of the 1909 act made the act of Jan. 21, 1903, 32 Stat. 775 applicable to the District of Columbia; but this act has been superseded by the National Defense Act of June 3, 1916, 39 Stat. 166, ch. 134.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-109. Government employees—Leaves of absence.

All officers and employees of the United States or of the District of Columbia who shall be members of the Officers' Reserve Corps shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to duty with troops or at



field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year. (May 12, 1917, 40 Stat. 72, ch. 12.)

## CROSS REFERENCE

Leave of absence of officers or employees who are members of the National Guard, § 39-608.

**§ 39-110. Government employees ordered to duty—Restoration to Government position.**

Members of the Officers' Reserve Corps who are in the employ of the United States government or of the District of Columbia and who are ordered to duty by proper authority shall, when relieved from duty, be restored to the positions held by them when ordered to duty. (May 12, 1917, 40 Stat. 72, ch. 12.)

**§ 39-111 [20: 1454]. Disbanding companies below minimum strength.**

When any company of the National Guard shall, for a period of not less than ninety days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter re-entering the service shall have allowed to them, as part of their term of service, the time already served. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68.)

## COMPILER'S NOTE

Section 14 of the act of 1889 fixed the minimum number of enlisted men in any company at forty. This section was repealed by the act of Feb. 18, 1909, 35 Stat. 630, ch. 146. It is considered that § 11 of the Act of 1889, as amended by the act of Feb. 18, 1909, 35 Stat. 629, ch. 146, § 11, was designed to take the place of § 14 of 1889, above referred to. Section 11 is considered as having been superseded by § 60 of the National Defense Act of 1916 (§ 39-107 herein).

## AMENDMENTS

The 1909 act did not amend the text of this section, but changed the section number from 18 to 12.

The act of 1916 provided that "no organization of the National Guard \* \* \* shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President."

## STATUTORY REFERENCE

Disbanding of National Guard organizations, consent of President, U. S. C., title 32, § 16.

**§ 39-112 [20: 1446]. President to be Commander-in-Chief.**

The President of the United States shall be the commander-in-chief of the militia of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6.)

## STATUTORY REFERENCES

See U. S. C., title 32.

Soldiers' and Sailors' Civil Relief Act of 1940, act of October 17, 1940, 54 Stat. 1178, ch. 888.

## Chapter 2.—COMMISSIONED OFFICERS

- Sec.  
39-201. Commanding general—Appointment and removal—Rank.  
39-202. Staff officers—Appointment and removal—Non-commissioned staff.  
39-203. Qualifications of staff officers—Tenure—Vacancies.  
39-204. Detail for adjutant general.  
39-205. Retired Army officer may be detailed as adjutant general.  
39-206. Officers—Appointment—Oath.  
39-207. Officers of staff departments—Appointment—Examination.  
39-208. Vacancies above grade of second lieutenant—How filled.  
39-209. Appointments to grade of second lieutenant.  
39-210. Examinations for promotion—Retirement for disability—Suspension for failure to appear.  
39-211. Examinations for second lieutenants.  
39-212. Special examination of officer's capability—Certificate to President.  
39-213. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.  
39-214. Discharge of commissioned officer.

**§ 39-201 [20: 1447]. Commanding general—Appointment and removal—Rank.**

There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7.)

## COMPILER'S NOTES

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

## CROSS REFERENCES

Power to make rules and regulations, § 39-905.  
President is Commander in Chief, § 39-112.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-202 [20: 1448]. Staff officers—Appointment and removal—Noncommissioned staff.**

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one adjutant-general, one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a noncommissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary sergeant, one ordnance sergeant, two staff sergeants, one hospital steward, one color sergeant, and one sergeant bugler.



(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66.)

#### AMENDMENT

The 1916 amendment omitted the following words at the end of the first sentence "and hold office until their successors are appointed and qualified, but may be removed at any time by the President," also after the words "adjutant general" the words "with the rank of lieutenant colonel."

#### CROSS REFERENCES

Date of commissions, § 39-902.  
General provision as to duties of officers, § 39-901.  
Noncommissioned officers, § 39-301.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-203 [20: 1449]. Qualifications of staff officers—Tenure—Vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia. (July 11, 1919, 41 Stat. 127, ch. 8, § 69.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-204 [20: 1450]. Detail for adjutant general.

The President may assign an officer of the army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this title: *Provided, however*, That the officer so assigned shall receive no other pay or emolument than that to which his rank in the army entitles him when on detached service. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-205 [20: 1451]. Retired Army officer may be detailed as adjutant-general.

The President of the United States may detail as adjutant-general of the District of Columbia militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army. (June 6, 1900, 31 Stat. 671, ch. 811.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-206 [20: 1455]. Officers—Appointment—Oath.

All officers shall be commissioned by the President of the United States, on the recommendation of the commanding general. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the

duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13.)

#### AMENDMENT

The 1909 amendment added the words "on the recommendation of the commanding general" at the end of the first sentence, omitted from the second sentence the words "In time of peace, or when not in the service of the United States they shall be previously elected or."

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-207 [20: 1456]. Officers of staff departments—Appointment—Examination.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the commanding general, subject to the examination required by law. (Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20 and 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14.)

#### AMENDMENT

Act of March 1, 1889, read as follows: "The staff officers of a regiment or battalion shall be nominated by the permanent commander thereof. Field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies."

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-208 [20: 1457]. Vacancies above grade of second lieutenant—How filled.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of second lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15.)

#### AMENDMENT

Act of March 1, 1889 provided as follows: "That elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general."

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-209 [20: 1458]. Appointments to grade of second lieutenant.

All appointments to the grade of second lieutenant shall be from the enlisted men, under regulations prescribed by the commanding general, and subject to the examination required by law. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16.)

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39-210 [20: 1459]. Examinations for promotion—Retirement for disability—Suspension for failure to appear.

The commanding general is authorized to prescribe a system of examination to be conducted at such



times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within thirty days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for ninety days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17.)

## AMENDMENT

Act of March 1, 1889, read as follows: "That every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission."

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-211 [20: 1460]. Examinations for second lieutenants.

The commanding general is authorized to prescribe a system of examination of enlisted men to determine their fitness for promotion to the grade of second lieutenant. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18.)

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-212 [20: 1461]. Special examination of officer's capability—Certificate to President.

Whenever, in the opinion of the commanding general of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the commanding general shall submit the name of such officer to the Secretary of War, with a view to his being ordered before a board of examination, to be appointed by the Secretary of War, which board shall examine said officer as to his physical, mental, and military qualifications.

If any officer shall fail to appear before a board of examination so appointed within thirty days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall forward the record of examination to the Secretary of War, with his recommendation thereon, for submission to the President. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19.)

## STATUTORY REFERENCE

See U. S. C., title 32.

## NOTES TO DECISIONS

## FEDERAL RECOGNITION OF OFFICERS

The withdrawal of federal recognition to an officer of the National Guard of the state does not terminate his status as a state officer. *Hurley v. United States ex rel. Gladman* (60 App. D. C. 69, 47 Fed. (2d) 431).

§ 39-213 [20: 1462]. Retirement after ten years' service—Increased rank—Retirement at sixty-four years of age—Wearing uniform after retirement—Service on military boards—Pay and allowances—Retirement on recommendation of commanding general.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of ten years may, upon his own application, be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made: *Provided, however*, That an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of ten years, or whose services have been especially meritorious, may be retired with increased rank of one grade and shall, before being so retired, receive from the President of the United States the commission of the new grade: *Provided further*, That whenever any officer on the active list reaches the age of sixty-four years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the States or Territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the commanding general may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amendable to court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the adjutant-general. The commanding general may at any time recommend to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least three commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20.)

## STATUTORY REFERENCE

See U. S. C., title 32.



§ 39-214 [20: 1463]. Discharge of commissioned officer.

A commissioned officer may be honorably discharged—

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21.)

#### AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 24 to 21.

### Chapter 3.—NONCOMMISSIONED OFFICERS

#### Sec.

39-301. Noncommissioned officers—Appointment—Reduction to ranks.

§ 39-301 [20: 1464]. Noncommissioned officers — Appointment—Reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22.)

#### COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### AMENDMENT

Act of March 1, 1889, provided as follows: "That noncommissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the noncommissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; noncommissioned officers of unattached companies shall be appointed by there

[their] respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company noncommissioned officers of his command."

#### CROSS REFERENCES

General provisions as to duties of officers, § 39-901.  
Noncommissioned staff of the militia, § 39-202.  
Officers generally, § 39-201 et seq.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### Chapter 4.—ENLISTED PERSONNEL

#### Sec.

39-401. Term of enlistment—Re-enlistment.  
39-402. Enlistment contract and oath.  
39-403. Discharge of enlisted men from the National Guard.  
39-404. Discharge without honor.  
39-405. Dishonorable discharge.

§ 39-401 [20: 1465]. Term of enlistment—Re-enlistment.

Original enlistments in the National Guard and in the National Guard of the United States shall be for a period of three years, and subsequent enlistments for periods of one or three years each: *Provided*, That all enlisted men of the National Guard on June 15, 1933, may, under such regulations as may be prescribed by the Secretary of War, be enlisted in grade, rating, and branch in the National Guard of the United States for the remaining unexpired portions of their enlistments in the National Guard: *And provided further*, That in the event of an emergency declared by Congress the period of any enlistment which otherwise would expire may by Presidential proclamation be extended for a period of six months after the termination of the emergency. (June 3, 1916, 39 Stat. 200, ch. 134, § 69; June 4, 1920, 41 Stat. 781, ch. 227, § 37; June 6, 1924, 43 Stat. 470, ch. 275, § 4; June 15, 1933, 48 Stat. 156, ch. 87, § 7.)

#### COMPILER'S NOTE

Section 26 of the act of 1889, 25 Stat. 775, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, § 23, is deemed to have been superseded by this section.

#### AMENDMENTS

Act of June 3, 1916, provided for an enlistment of six years, the first three in active organization and the remaining three in National Guard Reserve.

Act of June 4, 1920, provided for original enlistments for a period of 3 years and subsequent enlistments for 1 year.

Act of 1924 provided for subsequent enlistments of "one year or three years each."

Act of 1933 added the provisos.

#### CROSS REFERENCES

Disbanding companies below minimum strength, § 39-111.

Organization of National Guard, §§ 39-106, 39-107.

System of discipline and field exercise, § 39-904.

#### NOTES TO DECISIONS

##### IN GENERAL

It is immaterial whether the arrest was made before or after the issue or the service of the writ to release minor son from military service. *Ex Parte Foley* ((D. C.-Ky.), 243 Fed. 470).

Petitioner was not entitled to a discharge, and he could not be furloughed to the Reserve when he was in actual military service. *Ex Parte Roach* ((D. C.-Ala.), 244 Fed. 625).

Effect of this section was at most to make the enlistment voidable by the parent. *Reed v. Cushman* ((C. C. A. 1), 251 Fed. 872).



## CONTRACT OF ENLISTMENT

Fact that minor is under 21 when he enlisted, or that the written consent of his parent or guardian was not given to such enlistment, or that he was an alien, who had not made a declaration of his intention to become a citizen, or that he had a mother dependent upon him for support does not make his contract of enlistment void. *Ex Parte Dostal* ((D. C.-Ohio), 243 Fed. 664).

## ENLISTED INTO MILITARY SERVICE

It was not intended that the provision containing the expression "enlisted or mustered into the military service of the United States" should apply to only one branch of that service. *Hoskins v. Dickerson* ((C. C. A. 5), 239 Fed. 275).

## TRIAL BY MILITARY AUTHORITIES

Where petitioners were acting, under orders of the President in the discharge of a high duty, and might be ordered at any time to perform active military service, the State had no right to try the men for offense, but it was a case for the military authorities. *In re Wulzen* ((D. C.-Ohio), 235 Fed. 362).

## § 39-402 [20: 1466]. Enlistment contract and oath.

Men enlisting in the National Guard of the District of Columbia, shall sign an enlistment contract and subscribe to the following oath of enlistment: "I do hereby acknowledge to have voluntarily enlisted this ---- day of -----, 19--, as a soldier in the National Guard of the United States and of the District of Columbia, for the period of three (or one) years, under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the President of the United States, and of the officers appointed over me according to law and the rules and Articles of War."

The oath of enlistment prescribed in this section may be taken before any officer of the National Guard authorized to administer oaths of enlistment in the National Guard of the District of Columbia, by respective laws thereof. All oaths of enlistment administered prior to June 19, 1935 by the officers described above are hereby validated. (June 3, 1916, 39 Stat. 201, ch. 134, § 70; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 38; June 15, 1933, 48 Stat. 156, ch. 87, § 8; June 19, 1935, 49 Stat. 391, ch. 277, § 3.)

## COMPILER'S NOTE

Section 27 of the act of 1889, 25 Stat. 776, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, is deemed to have been superseded by this section.

## AMENDMENTS

The 1920 amendment substantially reworded the first paragraph.

The 1933 amendment changed the words "of enlistment" which followed the word "oath" in paragraph one to "or affirmation."

The 1935 amendment added the second paragraph.

## § 39-403 [20: 1467]. Discharge of enlisted men from the National Guard.

An enlisted man discharged from service in the National Guard, shall receive a discharge in writing in such form and with such classification as is or shall be prescribed for the Regular Army, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the Secretary of State may prescribe. (June 3, 1916,

39 Stat. 201, ch. 134, § 72; June 4, 1920, 41 Stat. 781, ch. 227, § 40; June 15, 1933, 48 Stat. 157, ch. 87, § 10.)

## COMPILER'S NOTE

Sections 28, 30 of the act of 1889, 25 Stat. 776, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 632, ch. 146, is deemed to have been superseded by this section.

## AMENDMENTS

The 1920 act added the exception with respect to men drafted into the military service.

The 1920 amendment added an exception which was deleted by the 1933 amendment.

The 1933 amendment added the words "and the National Guard of the United States," deleted the word "President" and inserted in lieu thereof the words "Secretary of War."

## § 39-404 [20: 1468]. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the commanding general on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than three months. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26.)

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-405 [20: 1469]. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the commanding general upon conviction of felony in a civil court; upon discovery of re-enlistment after previous dishonorable discharge; or to carry out a sentence of a court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27.)

## STATUTORY REFERENCE

See U. S. C., title 32.

## Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

## Sec.

- 39-501. Uniform, arms, and equipment—Issuance by War Department.
- 39-502. Regulations for reissue of equipment by commanding general.
- 39-503. Personal liability for equipment—Determination of value of lost equipment.
- 39-504. Returns of equipment.
- 39-505. Penalty for selling, pawning, injuring, or retaining public property.
- 39-506. Transfer of property on promotion, retirement, or dismissal.
- 39-507. Failure to transfer property—Surveying officer—Appointment—Duties.
- 39-508. Defective accounts—Surveying officer to fix responsibility.
- 39-509. Surveying officer to be appointed upon death or desertion of accounting officer.
- 39-510. Liability of officer or his estate until accounts are found correct.
- 39-511. Liability of officer's estate for property lost, injured, or destroyed.
- 39-512. Distinctive uniforms.
- 39-513. Right to own personal property—Actions for injuries.
- 39-514. Armories to be provided.
- 39-515. Annual inspections.
- 39-516. Use of Washington Barracks.
- 39-517. Purchase of supplies.



**§ 39-501 [20: 1470]. Uniform, arms, and equipment—  
Issuance by War Department.**

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the Regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued in accordance with section 33, title 32, of the Code of the Laws of the United States of America. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the commanding general at such times, in manner, and on such forms as the Secretary of War may require. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29.)

**COMPILER'S NOTES**

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

Section 36 of the act of 1889, 25 Stat. 777, ch. 328, as amended by act of Feb. 18, 1909, 35 Stat. 634, ch. 146, is deemed to have been superseded by act of June 3, 1916, 39 Stat. 204, ch. 134, § 87, as amended by June 3, 1924, 43 Stat. 363, ch. 244, § 1, and Feb. 23, 1925, 43 Stat. 1077, ch. 371, § 4. Section 87, as amended in 1925, reads as follows:

*"SEC. 87. Disposition and Replacement of Damaged Property, and so forth.—All military property issued to the National Guard as herein provided shall remain the property of the United States. Whenever any such property issued to the National Guard in the District of Columbia shall have been lost, damaged, or destroyed, or become unserviceable or unsuitable by use in service or from any other cause, it shall be examined by a disinterested surveying officer of the Regular Army or the National Guard, detailed by the Secretary of War, and the report of such surveying officer shall be forwarded to the Secretary of War, or to such officer as he shall designate to receive such reports; and if it shall appear to the Secretary of War from the record of survey that the property was lost, damaged, or destroyed through unavoidable causes, he is hereby authorized to relieve the District of Columbia from further accountability therefor. If it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage, or destruction could have been avoided by the exercise of reasonable care, the money value of such property shall be charged to the District of Columbia to be paid from District funds, or any funds other than Federal. If the articles so surveyed are found to be unserviceable or unsuitable, the Secretary of War shall direct what disposition by sale or otherwise shall be made of them; and if sold, the proceeds of such sale, as well as stoppages against officers and enlisted men, and the net proceeds of collections made from any person or from the District to reimburse the Government for the loss, damage, or destruction of any property, shall be deposited in the Treasury of the United States as a credit to the District of Columbia, accountable for said property, and shall remain available throughout the then current fiscal year and throughout the fiscal year following that in which the sales, stoppages, and collections were effected,*

*for the purposes provided for in that portion of its allotment set aside for the purchase of similar supplies, stores, or material of war: Provided, That if the District of Columbia shall neglect or refuse to pay, or to cause to be paid, the money equivalent of any loss, damage, or destruction of property charged against the District of Columbia by the Secretary of War after survey by a disinterested officer appointed as hereinbefore provided, the Secretary of War is hereby authorized to debar the District of Columbia from further participation in any and all appropriations for the National Guard until such payment shall have been made: Provided further, That property issued to the National Guard and which has become unserviceable through fair wear and tear in service, may, after inspection thereof and finding to that effect made by an officer of the Regular Army designated by the Secretary of War, be sold or otherwise disposed of, and the District of Columbia shall be relieved from further accountability therefor; such inspection, and sale or other disposition, to be made under regulations prescribed by the Secretary of War, and to constitute as to such property a discretionary substitute for the examination, report, and disposition provided for elsewhere in this section. (U. S. C., title 32, § 47.)*

The third sentence as enacted, actually reads "Such property shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same." However, U. S. C., title 32, § 33, seems to have superseded this sentence.

**AMENDMENT**

The 1909 act did not amend the text of this section, but changed the section number from 31 to 29.

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-502 [20: 1471]. Regulations for reissue of equipment by commanding general.**

The commanding general may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30.)

**AMENDMENT**

The act of 1909 made no change in the text of this section, but changed the section number from 32 to 30.

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-503 [20: 1472]. Personal liability for equipment—  
Determination of value of lost equipment.**

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the commanding general that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the commanding general, shall pay the value of such property to the Quartermaster-General within one year after such loss or destruction. The value of lost or destroyed



property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the commanding general of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the commanding general of the militia. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31.)

## CROSS REFERENCE

Disposition of funds, § 39-806.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-504 [20: 1473]. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32.)

## AMENDMENT

The 1909 act did not change the text of this section, but changed the section number from 33 to 32.

## CROSS REFERENCE

Disposition of funds, § 39-806.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-505 [20: 1474]. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, wilfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the police court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the police court to be dealt with according to the provisions of this section. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33.)

## AMENDMENT

The 1909 act did not change the text of this section, but changed the section number from 34 to 33.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-506 [20: 1475]. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the commanding general of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34.)

## AMENDMENT

The 1909 amendment repealed § 35 of the 1889 Act, and inserted in lieu thereof §§ 34-38 (§§ 39-506 to 39-510). The original § 35 provided as follows: "That until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in § 34 (§ 39-505)."

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-507 [20: 1476]. Failure to transfer property—Surveying officer—Appointment—Duties.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same as aforesaid, fail to make proper transfer as directed within thirty days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report the commanding general may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35.)

## CROSS REFERENCE

See amendment note to § 39-506.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-508 [20: 1477]. Defective accounts—Surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to trans-



fer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the commanding general, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the adjutant-general for the action of the commanding general of the militia. Upon receiving such a report, the commanding general may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36.)

## CROSS REFERENCE

See amendment note to § 39-506.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-509 [20: 1478]. Surveying officer to be appointed upon death or desertion of accounting officer.**

In the event of the death or desertion of any officer accountable for public property the commanding general shall direct that a surveying officer be appointed, and also designate an officer to receive such property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37.)

## CROSS REFERENCE

See amendment note to § 39-506.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-510 [20: 1479]. Liability of officer or his estate until accounts are found correct.**

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

## CROSS REFERENCE

See amendment note to § 39-506.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-511 [20: 1480]. Liability of officer's estate for property lost, injured, or destroyed.**

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his estate in the manner provided in section 39-505. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

## CROSS REFERENCES

See amendment note to § 39-506.

Disposition of funds, § 39-806.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-512 [20: 1481]. Distinctive uniforms.**

Any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40.)

## AMENDMENT

The 1909 act did not change the text of this section but changed the section number from 37 to 40.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-513 [20: 1482]. Right to own personal property—Actions for injuries.**

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before the municipal court, or before the District Court of the United States for the District of Columbia, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 38 to 41.

## STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-514 [20: 1483]. Armories to be provided.**

The quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42.)



## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 39 to 42.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-515 [20: 1486]. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 42 to 45.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-516 [20: 1488]. Use of Washington Barracks.

National Guard shall have the use of the drill grounds and rifle range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 44 to 47.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-517 [20: 1517]. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among business men, when the aggregate of the amount required does not exceed one hundred dollars. (May 26, 1908, 35 Stat. 308, ch. 198.)

## CROSS REFERENCE

Expenses and allowances, § 39-802 et seq.

## Chapter 6.—ACTIVE MILITARY DUTY

## Sec.

- 39-601. Drills to be military duty.
- 39-602. Prescribing drills.
- 39-603. Suppression of riots.
- 39-604. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.
- 39-605. Parades to have right of way.
- 39-606. Rules for parades and encampments.
- 39-607. Camp duty.
- 39-608. Governmental employees to have leave of absence to attend parades and encampments.

## § 39-601 [20: 1484]. Drills to be military duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extend-

ing beyond the term of service for which he is then ordered. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43.)

## COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1899, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

## AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 40 to 43.

## CROSS REFERENCES

Right-of-way, § 39-605.

Rules of parade or encampment, § 39-606.

System of discipline and field exercises, § 39-904.

## STATUTORY REFERENCES

See U. S. C., title 32.

Soldiers' and Sailors' Civil Relief Act. Act of October 17, 1940, 54 Stat. 1178, ch. 888.

## § 39-602 [20: 1485]. Prescribing drills.

The commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 41 to 44.

## STATUTORY REFERENCE

See U. S. C., title 32.

## § 39-603 [20: 1489]. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48.)



## AMENDMENT

The 1909 act did not amend the text of the 1899 act, but changed the section number from 45 to 48.

## CROSS REFERENCE

Enrolled militia subject to call, § 39-104.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-604 [20:1490]. Cause for being excused from duty when militia is ordered into service of United States or to suppress riots.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the commanding general, or the by-laws of the organization to which the officer or soldier belongs. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 46 to 49.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-605 [20:1491]. Parades to have right-of-way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 47 to 50.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-606 [20:1492]. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the police court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars. (Mar. 1, 1889, 25

Stat. 779, ch. 328, § 48; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51.)

## AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 48 to 51.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-607 [20:1487]. Camp duty.

The National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 43 to 46.

## STATUTORY REFERENCE

See U. S. C., title 32.

COMPANY DRILL AND PARTICIPATION IN MANEUVERS—  
ANNUAL AMOUNT REQUIRED

Under such regulations as the Secretary of War shall prescribe, each company, troop, battery, and detachment in the National Guard shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year, and shall, in addition thereto, participate in encampments, maneuvers, or other exercises, including outdoor target practice, at least fifteen days in training each year, including target practice, unless such company, troop, battery, or detachment shall have been excused from participation in any part thereof by the Secretary of War: *Provided*, That an assembly for drill and instruction may consist of a single duly ordered formation of a company, troop, battery, or detachment, or when so authorized by the Secretary of War of a series of duly ordered formations of subdivisions or parts thereof, but in the latter case the series of formations of subdivisions or groups must comprehend and include the entire organization, and must be included within the time limit of seven consecutive days within a calendar month. The sum total of the attendance at all the separate consecutive formations announced as constituting that assembly shall be counted as the attendance at the actual military assembly for the required period of time; but no officer, warrant officer, or enlisted man shall be counted more than once, nor receive credit for more than one required period of actual military attendance even though he may have attended more than one of the formations which constitute the assembly for the required period of time: *Provided further*, That credit for an assembly for drill or for indoor target practice shall not be given unless the number of officers and enlisted men present for duty at such assembly shall equal or exceed a minimum to be prescribed by the President, nor unless the period of actual military duty and instruction participated in by each officer and enlisted man at each such assembly at which he shall be credited as having been present shall be of at least one and one-half hours' duration and character of training such as may be prescribed by the Secretary of War. (June 3, 1916, 39 Stat. 206, ch. 134, § 92; June 3, 1924, 43 Stat. 363, ch. 244, § 2.)

ENCAMPMENTS OR MANEUVERS FOR FIELD OR COAST-DEFENSE  
INSTRUCTION

Under such regulations as the President may prescribe the Secretary of War is authorized to provide for the participation of the whole or any part of the National Guard in encampments, maneuvers, or other exercises, in-



cluding outdoor target practice, for field or coast-defense instruction, either independently or in conjunction with any part of the Regular Army, and there may be set aside from the funds appropriated for that purpose and allotted to any State, Territory, or the District of Columbia, such portion of said funds as may be necessary for the payment, subsistence, transportation, and other proper expenses of such portion of the National Guard of such State, Territory, or the District of Columbia as shall participate in such encampments, maneuvers, or other exercises, including outdoor target practice, for field and coast-defense instruction. (June 3, 1916, 39 Stat. 206, ch. 134, § 94.)

**§ 39-608 [20:1493]. Governmental employees to have leave of absence to attend parades and encampments.**

All officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this title. This section shall be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 49; July 1, 1902, 32 Stat. 615, ch. 1352; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 52.)

#### AMENDMENTS

The 1902 act provided that this section should be construed as covering all days of service which the National Guard, or any portion thereof, may be ordered to perform by the commanding general.

The 1909 act did not amend the text of the section, but changed the section number from 49 to 52.

#### CROSS REFERENCE

Leave of absence of Government employees who are members of the Reserve Corps, §§ 39-109, 39-110.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### Chapter 7.—COURTS-MARTIAL

#### Sec.

- 39-701. Military courts—Designated.
- 39-702. Courts of inquiry.
- 39-703. General courts martial.
- 39-704. Constitution—Jurisdiction.
- 39-705. Prosecution of members prohibited.
- 39-706. Jurisdiction to be presumed.
- 39-707. Witnesses—Compulsory attendance.
- 39-708. Sentences—How executed.
- 39-709. Warrants for arrest of accused.

**§ 39-701 [20:1495]. Military courts—Designated.**

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54.)

#### COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### AMENDMENT

The 1909 amendment repealed § 50 of the act of 1889 and inserted in lieu thereof §§ 54 and 55 (this section and § 39-702).

#### COMPILER'S NOTE

Sections 102 and 103 of the act of June 3, 1916, 39 Stat. 208, ch. 134, provide as follows:

"SEC. 102. *System of courts-martial for National Guard.*—Except in organizations in the service of the United States, courts-martial in the National Guard shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted like, and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations governing the Army of the United States, and the proceedings of courts-martial of the National Guard shall follow the forms and modes of procedure prescribed for said similar courts."

"SEC. 103. General courts-martial of the National Guard not in the service of the United States may be convened by orders of the President, or by the Governors of the respective States and Territories, or by the commanding general of the National Guard of the District of Columbia, and such courts shall have the power to impose fines not exceeding \$200; to sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts."

#### STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-702 [20:1496]. Courts of inquiry.**

Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55.)

#### CROSS REFERENCE

See amendment note to § 39-701.

#### STATUTORY REFERENCE

See U. S. C., title 32.

**§ 39-703 [20:1497]. General courts-martial.**

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or commanding general at such times as the interests of the service may require. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56.)

#### COMPILER'S NOTE

Sections 52-54 of act of 1889, 25 Stat. 779, ch. 328 were repealed by act of Feb. 18, 1909, 35 Stat. 635, ch. 146.

#### AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 51 to 56.

#### CROSS REFERENCE

See compiler's note to § 39-701.

#### STATUTORY REFERENCE

See U. S. C., title 32.



**§ 39-704 [20: 1498]. Constitution—Jurisdiction.**

The constitution and jurisdiction of military courts, the form and manner in which their proceedings shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the Articles of War and the law and procedure of the military courts of the United States (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57.)

**CROSS REFERENCES**

Failure of member of National Guard to report for duty when ordered into service, § 39-604.

Failure of members of enrolled militia to appear when ordered out, § 39-105.

Failure to return, or destruction of Government property, § 39-504.

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-705 [20: 1499]. Prosecution of members prohibited.**

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58.)

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-706 [20: 1500]. Jurisdiction to be presumed.**

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59.)

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-707 [20: 1501]. Witnesses — Compulsory attendance.**

Every person not belonging to the National Guard of the District of Columbia who, being duly subpoenaed to appear as a witness before the military courts herein provided for, wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than one

hundred dollars, or imprisonment not exceeding thirty days, or both, at the discretion of the court: *Provided*, That this section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; *And provided*, That no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate or degrade him. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60.)

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-708 [20: 1502]. Sentences—How executed.**

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61.)

**STATUTORY REFERENCE**

See U. S. C., title 32.

**§ 39-709 [20: 1503]. Warrants for arrest of accused.**

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62.)

**STATUTORY REFERENCE**

See U. S. C., title 32.

**Chapter 8.—PAY AND ALLOWANCES****Sec.**

39-801. Payment for active service.

39-802. Allowances for general expenses.

39-803. Musicians' pay.

39-804. Subsistence while on duty.

39-805. Annual estimates.

39-806. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

**§ 39-801 [20: 1494]. Payment for active service.**

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to two times the pay of enlisted men of the Regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the Regular Army. Each mounted officer and enlisted



man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him: *Provided*, That when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the Regular Army. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53.)

#### COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39—802 [20: 1504]. Allowances for general expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section 39—901. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63.)

#### COMPILER'S NOTE

The last phrase of this section in the original act read as follows: "and paid in the manner provided for in section 60." Section 60 of the 1889 act now appears as § 39—901, and as it does not refer to payment, it seems probable that the reference should have been to § 58 of that act which appears in this code as § 39—805.

#### AMENDMENT

The 1909 amendment did not change the text of this section, but changed the section number from 55 to 63.

#### CROSS REFERENCE

Method of purchase of services or supplies, § 39—517.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39—803 [20: 1505]. Musicians' pay.

During the annual encampment, and on every duty on parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted bands, four dollars; to the chief musicians, eight dollars; and to the principal musicians, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion: *Provided*, That the total pay of the enlisted musicians shall not in any event

exceed the rates authorized by this section. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64.)

#### COMPILER'S NOTE

The act of July 15, 1939, 53 Stat. 1030, ch. 281: *Provided*, That so much of the act of March 1, 1889 (25 Stat. 773), as amended by the act of February 18, 1909 (35 Stat. 629), as provides and fixes the rates of extra compensation to members of the regularly enlisted bands of the Militia of the District of Columbia, is hereby repealed.

#### AMENDMENT

The 1909 act changed the number of this section from 56 to 64; omitted the words "to each member of the regularly enlisted corps of field music, two dollars," and changed "chief musician" and "principal musician" to "chief musicians" and "principal musicians" in the first sentence, and inserted the final proviso in lieu of a sentence which read as follows: "The payments for bands of music and drum corps shall be made in the manner provided in section sixty."

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39—804 [20: 1506]. Subsistence while on duty.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the army. Such stores shall be issued from the stores and supplies appropriated for the use of the army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65.)

#### AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 57 to 65.

#### STATUTORY REFERENCE

See U. S. C., title 32.

### § 39—805 [20: 1507]. Annual estimates.

The commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law. (Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66.)

#### COMPILER'S NOTE

The act of June 11, 1896, 29 Stat. 412, ch. 419, provided as follows: "Hereafter all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable."

#### AMENDMENT

The 1909 act repealed section 58 and inserted in lieu thereof section 66 which substituted the closing words "disbursed in accordance with law" for "disbursed by the commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District."



## CROSS REFERENCE

Method of purchase of services or supplies, § 39-517.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-806 [20: 1516]. Deductions for lost property—Officers' clothing—Use of fines—Use of appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States government for such property lost or destroyed: *Provided further*, That there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment: *Provided further*, that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the commanding general of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the commanding general shall make an accounting in like manner as for the appropriation disbursed for pay of troops: *Provided further*, That after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary: *Provided further*, That after March 2, 1911, the commanding general of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of section sixteen hundred and sixty-one, United States Revised Statutes or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or damaged by such individual. (Mar. 2, 1911, 36 Stat. 1004, ch. 192.)

## COMPILER'S NOTE

R. S., § 1661, referred to in this section, was repealed by act March 3, 1933, 47 Stat. 1428, ch. 202, § 1.

## CROSS REFERENCE

Other provisions concerning disposition of funds, § 39-504.

## STATUTORY REFERENCES

See U. S. C., title 32.  
Soldiers' and Sailors' Civil Relief Act. Act of October 17, 1940, 54 Stat. 1178, ch. 888.

## Chapter 9.—MISCELLANEOUS PROVISIONS

## Sec.

- 39-901. Duties of officers.
- 39-902. Date of commissions.
- 39-903. Regulations—Company and battalion rules.
- 39-904. System of discipline and field exercise.
- 39-905. Commanding general to make regulations.
- 39-906. Naval battalion not affected.

§ 39-901 [20: 1509]. Duties of officers.

The departmental and military duties of the officers provided for in this title shall be correlative with those discharged by similarly designated officers in the Army of the United States. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68.)

## COMPILER'S NOTE

The act of Feb. 18, 1909, 35 Stat. 629, ch. 146 amended the act of Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1899 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1899 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1899 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 60 to 68.

## STATUTORY REFERENCE

See U. S. C., title 32.

## NOTES TO DECISIONS

## OFFICERS EXCEEDING AUTHORITY

Actions of company captain in giving furlough without authority from superior officers, were not binding upon the military authorities. *Ex Parte Roach* ((D. C.-Ala.), 244 Fed. 625).

§ 39-902 [20: 1515]. Date of commissions.

Any commission issuing under the provisions of this title shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade. (Mar. 1, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76.)

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-903 [20: 1508]. Regulations—Company and battalion rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws subject to the approval of the commander-in-chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however*, That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And*



*provided further*, That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67.)

## AMENDMENT

The 1909 act did not amend the text of this section but changed the section number from 59 to 67.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-904 [20: 1510]. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69.)

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 61 to 69.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-905 [20: 1511]. Commanding general to make regulations.

The commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the army so far as they may be applicable. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70.)

## COMPILER'S NOTES

Section 63 of the act of 1889, 25 Stat. 781, ch. 328, provided: "That the act 'more effectually to provide for the organization of the militia of the District of Columbia,' approved March third, eighteen hundred and three, is hereby repealed."

The act of Feb. 18, 1909, 35 Stat. 636, ch. 146, amends § 63 of the act of 1889 by changing the section from sixty-three to seventy-one.

## AMENDMENT

The 1909 act did not amend the text of this section, but changed the section number from 62 to 70.

## STATUTORY REFERENCE

See U. S. C., title 32.

§ 39-906 [20: 1514]. Naval battalion not affected.

Nothing contained in this title shall be held to alter the status or organization of the naval battalion as now provided for by law. (Mar. 3, 1889, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75.)

## STATUTORY REFERENCE

See U. S. C., title 32; title 34, § 856.







## TITLE 40.—MOTOR VEHICLES

Chap.	Sec.
1. Registration of motor vehicles.....	40-101
2. Inspection .....	40-201
3. Operators' permits.....	40-301
4. Owners' Financial Responsibility Act.....	40-401
5. Public-owned vehicles.....	40-501
6. Regulation of traffic.....	40-601
7. Liens on motor vehicles or trailers.....	40-701

### Chapter 1.—REGISTRATION OF MOTOR VEHICLES

Sec.
40-101. Definitions.
40-102. Registration of motor vehicles—Certificates— Tags—Duplicates—Dealers—Fees—Official and foreign vehicles—Transfers—Regulations.
40-103. Fees classified and use of proceeds designated.
40-104. Unlawful acts—Penalty.
40-105. Provisions not affected.

#### § 40-101 [20: 968]. Definitions.

As used in this chapter—

(a) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks.

(b) The term "person" means an individual, partnership, corporation, or association.

(c) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(d) The term "director" means the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

(e) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles.

(f) The term "public highway" means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(g) The term "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(h) The term "farm tractor" means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(i) The term "pneumatic tire" means a tire inflated with compressed air. (Aug. 17, 1937, 50 Stat. 679, ch. 690, § 1, title IV.)

#### CROSS REFERENCE

Powers and duties of department of vehicles and traffic, § 40-603.

§ 40-102 [20: 968a]. Registration of motor vehicles—Certificates—Tags—Duplicates—Dealers—Fees—Official and foreign vehicles—Transfers—Regulations.

(a) No motor vehicle shall be operated and no trailer operated or moved on the public highways of the District of Columbia (except motor vehicles or trailers operated by nonresidents, exempted under the provisions of section 40-303, and motor vehicles covered by a dealer's registration as provided in subsection (b) (1) of this section) unless registered in the department of vehicles and traffic of the District of Columbia by the owner thereof. Upon receipt of an application from the owner of a motor vehicle and (except in the case of a motor vehicle covered by subsection (b) (2) of this section) payment of a registration fee computed as provided in section 40-103, and if there is in force with respect to such motor vehicle a valid certificate of title issued under section 40-603, the director shall issue to such owner a registration certificate and identification tags for such motor vehicle.

(b) The Commissioners of the District of Columbia by regulation shall provide for the issuance by the director—

(1) Annually to any dealer in motor vehicles, upon payment of the fee prescribed in section 40-103, of a registration certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles in accordance with regulations promulgated by the commissioners;

(2) Annually, without charge, of certificates of registration and identification tags for all motor vehicles owned by the United States or by the District of Columbia, or officially used by any duly accredited representative of a foreign government; and

(3) Of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereof, upon payment of a fee of \$1 for each set of duplicate tags or 50 cents for each duplicate registration certificate.

(c) Every registration made under this chapter shall expire at midnight on the last day of the registration year for which the registration was made, unless the time be extended by the commissioners. Any such registration may be renewed for the ensuing registration year upon application made by the



owner during the months of February and March, and upon payment of the fees required by law. During the month of March it shall be lawful to operate a motor vehicle registered for the ensuing registration year. For the purposes of this chapter, a registration year shall be deemed to begin on April 1 and end on March 31: *Provided*, That motor vehicles that may have been registered for the period ending February 29, 1940, shall be deemed to be registered for the registration year ending March 31, 1940.

(d) Upon the sale or other transfer to another owner of any motor vehicle registered under this chapter, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle may register another motor vehicle for the unexpired portion of the registration year upon payment of a fee of \$1 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle under section 40-103, in case the latter is the greater. Upon the death of a joint owner of a motor vehicle registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be \$1.

(e) The Commissioners of the District of Columbia are authorized to prescribe such regulations as may be necessary to carry out the provisions of this chapter and shall prescribe such form of application for registration, such form of registration certificate, such design of identification tags, and provide for the keeping of such records of registration and transfers of registration as will facilitate the identification and the regulation of motor vehicles operated in the District of Columbia. (Aug. 17, 1937, 50 Stat. 680, ch. 690, § 2, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1.)

#### COMPILER'S NOTES

The appropriation acts of March 3, 1909, 35 Stat. 693, ch. 250, § 1; May 18, 1910, 36 Stat. 379, ch. 248, § 1, (D. C. 1929, title 20, § 914), provided as follows:

"There shall be assessed and collected an annual wheel tax on all automobiles, or other motor vehicles, owned or operated in the District of Columbia, having seats for only two persons, the sum of three dollars; and on all such vehicles having seats for more than two persons an additional tax of two dollars for each additional seat."

It is believed that this section is obsolete. The tax is not now being collected by the municipal authorities. It has not been repeated in subsequent appropriation acts and the presumption is that provisions of appropriation acts are temporary. (27 O. A. G. 108.)

#### AMENDMENTS

The 1938 act amended paragraphs (c) and (d) of the section by changing the period of registration from the calendar year to a registration year beginning on the first day of March and ending on the last day of February.

The 1939 act amended paragraph (c) by changing the registration year to begin on the first day of April and end on the last day of March.

#### CROSS REFERENCES

Operators' permits, § 40-301 et seq.

Revocation and suspension of licenses and permits, § 40-402 and notes.

Rules and regulations generally, § 40-603 and notes.

Taxes on motor vehicles must be paid before registration, § 47-1210.

Titling fees, § 40-603.

§ 40-103 [20:968b]. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle operated in the District of Columbia and for each trailer operated or moved in the District of Columbia required to be registered under sections 40-101 to 40-105, the registration fees provided in this section.

(b) Class A. For each gasoline-propelled passenger vehicle, including passenger vehicles licensed under paragraph (b) or paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is not more than three thousand five hundred pounds, \$5.00; more than three thousand five hundred pounds and not more than four thousand five hundred pounds, \$3.00; over four thousand five hundred pounds, \$12.00.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each gasoline-propelled truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator, with the exception of passenger vehicles licensed under paragraph (b) of section 47-2431.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is not more than two thousand pounds, \$15.00; more than two thousand pounds and not more than four thousand pounds, \$20.00; more than four thousand pounds and not more than six thousand pounds, \$35.00; more than six thousand pounds and not more than eight thousand pounds, \$50.00; more than eight thousand pounds and not more than ten thousand pounds, \$65.00; more than ten thousand pounds and not more than twelve thousand pounds, \$75.00; more than twelve thousand pounds and not more than sixteen thousand pounds, \$100; over sixteen thousand pounds, \$150.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis plus the weight of the body is not more than five hundred pounds, \$5.00; more than five hundred pounds and not more than twelve hundred and fifty pounds, \$10.00; more than twelve hundred and fifty pounds and not more than two thousand pounds, \$15.00; more than two thousand pounds and not more than four thousand pounds, \$20.00; more than four thousand pounds and not more than six thousand pounds, \$35.00; more than six thousand pounds and not more than eight thousand pounds, \$50.00; more than eight thousand pounds and not more than ten thousand pounds, \$65.00; more than ten thousand pounds and not more than twelve thousand pounds, \$75.00; more than twelve thousand pounds and not more than sixteen thousand pounds, \$100; over sixteen thousand pounds, \$150.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$5.00.



Class E. Motor vehicles not propelled by gasoline, double the fees for similar vehicles propelled by gasoline.

Class F. For dealers' identification tags, first three sets of tags, \$25.00, and \$5.00 for each additional set.

(c) When application for registration of any motor vehicle is received by the director on or after October 1, the registration fee for such vehicle for the registration year shall be one-half the amount provided for the class in which such vehicle falls.

(d) All proceeds from fees payable under this chapter and all moneys collected from the motor-vehicle fuel tax, and fees charged for the titling of motor vehicles, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total amount appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created. (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2.)

#### AMENDMENTS

The 1938 act amended (b) of the section by inserting "wholly" in clause (1) of Class A; "wholly or partially" in clause (2) of Class A; "wholly" in clause (1) of Class B; "wholly or partially" in clause (2) of Class B; by removing trailers from the provisions of clause (1) of Class B and inserting Class C and changing the then Classes C to E to Classes D to F.

Subsection (c) was amended in 1938 by changing "August 1" to "September 1" and in 1939 by changing "September 1" to "October 1."

#### CROSS REFERENCES

Department of motor vehicles and traffic, § 40-603.  
Fees for operators permits, § 40-301.  
Inspection fees, §§ 40-201, 40-202.  
Motor vehicle fuel tax, § 47-1901 et seq.  
Refund of fees when license refused, § 47-1018.  
Titling and retitling, fees, § 40-603.

#### § 40-104 [20: 968c]. Unlawful acts—Penalty.

(a) It shall be unlawful—

(1) For any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of section 40-303) (A) if such motor vehicle or trailer is not registered as required by this chapter, (B) if such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor, or (C) if such person does not have in his possession or in the motor vehicle or trailer operated the certificate of registration required therefor.

(2) For the owner of any motor vehicle knowingly to permit the operation thereof contrary to any provision of paragraph (1).

(3) To use a false or fictitious name or address in any application for registration or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application.

(b) Any person violating any provision of this chapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$300 or imprisonment of not more than thirty days, or both such fine and imprisonment. All such prosecutions shall be in the police court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 4, title IV.)

#### § 40-105 [20: 968d]. Provisions not affected.

(a) Nothing in this chapter shall be construed to affect the power of the Commissioners of the District of Columbia, under the District of Columbia Traffic Act, 1925, as amended, to make rules and regulations, not inconsistent with the provisions of this chapter, with respect to the registration of motor vehicles.

(b) Nothing in this chapter shall be construed to relieve any person from the payment of any license tax under sections 47-2101 to 47-2109, 47-2301 to 47-2350. (Aug. 17, 1937, 50 Stat. 682, ch. 690, § 5, title IV.)

#### COMPILER'S NOTES

"The District of Columbia Traffic Act, 1925, as amended" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-612, 40-614, 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623 and 11-1407.

The act of August 17, 1937, 50 Stat. 682, ch. 690, § 7, title IV, provided as follows: "This title (§§ 40-101 to 40-105) shall take effect on January 1 of the first calendar year following the enactment thereof, except that the Commissioners of the District of Columbia are authorized to provide for the registration of motor vehicles under this title (§§ 40-101 to 40-105) for such calendar year, beginning with the 1st day of November preceding such effective date."

#### Chapter 2.—INSPECTION

##### Sec.

- 40-201. Annual inspection of motor vehicles—Inspection fee.
- 40-202. Payment to collector of taxes.
- 40-203. Appropriations for facilities for inspection.
- 40-204. Vehicles exempt from inspection fee.
- 40-205. Vehicles not inspected, or unsafe.



## Sec.

40-206. Penalties.

40-207. Regulations by Commissioners.

## § 40-201 [6: 256]. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle there shall be levied and collected a fee known as the "inspection fee" of \$1 for the calendar year 1939 for each motor vehicle registered in the District of Columbia, including electrics, and during 1940 and each year thereafter inspection fee thus levied shall be 50 cents on each vehicle. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1.)

## CROSS REFERENCES

Fees generally, § 40-103 and notes.

Other provisions concerning supervision, control, and inspection of motor vehicles, § 40-603.

Refund of fees when license refused, § 47-1018.

## § 40-202 [6: 256a]. Payment to collector of taxes.

The inspection fee shall be paid to the collector of taxes and shall be deposited in the Treasury of the United States to the credit of the special fund created by sections 47-1901 to 47-1916, and the District of Columbia Revenue Act of 1937. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2.)

## CROSS REFERENCES

Disposition of fees, § 40-103.

For District of Columbia Revenue Act of 1937, see §§ 47-1401 to 47-1409, 47-1601 to 47-1626, 47-1701 to 47-1715, 47-1801 to 47-1808, 47-1901 to 47-1903, 47-1905 to 47-1907, 47-1908, 47-1911, and 47-2501 to 47-2504, and §§ 40-101 to 40-105.

## § 40-203 [6: 256b]. Appropriations for facilities for inspection.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles in the District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3.)

## § 40-204 [6: 256c]. Vehicles exempt from inspection fee.

All motor vehicles owned and officially used by the government of the United States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 4.)

## CROSS REFERENCE

Publicly owned vehicles, § 40-501 et seq.

## § 40-205 [6: 256d]. Vehicles not inspected, or unsafe.

The Commissioners of the District of Columbia or their designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason they may revoke or suspend any registra-

tion already made: *Provided*, That the provisions of section 40-302 (a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5.)

## CROSS REFERENCE

Revocation or suspension of license and permits generally, § 40-402 and notes.

## § 40-206 [6: 256e]. Penalties.

Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than \$300. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6.)

## § 40-207 [6: 256f]. Regulations by Commissioners.

The Commissioners of the District of Columbia shall make such regulations as in their judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in their judgment are necessary to enforce such regulations. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7.)

## CROSS REFERENCE

Rules and regulations generally, § 40-603 and notes.

## Chapter 3.—OPERATORS' PERMITS

## Sec.

40-301. Operators' permits—Application—Examinations, periods for which issued—Lost permits—Age restrictions—To be in possession of operator—Operation without permit prohibited.

40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Non-residents—Penalty.

40-303. Nonresidents exempt from registration—Period of exemption.

§ 40-301 [6: 244]. Operators' permits—Application—Examinations, period for which issued—Lost permits—Age restrictions—To be in possession of operator—Operation without permit prohibited.

(a) Upon application made under oath and the payment of the fee hereinafter prescribed, the commissioners or their designated agent is hereby authorized to issue a motor-vehicle operator's permit to any individual who, after examination, in the opinion of the commissioners or their designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The commissioners or their designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration of his ability to operate a motor vehicle within a congested portion of the District and in the presence of such individuals as he may authorize to conduct the demonstration, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the director. Should the commissioners or their designated agent believe that the issuance or reissu-



ance of a permit in accordance with the provisions of this chapter may prove a menace to public safety he may, in his discretion, refuse the issuance or reissuance thereof. Operators' permits shall be issued for a period not in excess of three years, and shall be renewable for periods of three years upon compliance with such regulations as the Commissioners or their designated agent may prescribe. The fee for any such permit shall be three dollars. In case of the loss of an operator's permit the individual to whom such permit was issued shall forthwith notify the Commissioners or their designated agent, who shall furnish such individual with a duplicate permit. The fee for each such duplicate permit shall be 50 cents. No operator's permit shall be issued to any individual under 16 years of age; and no such permit shall be issued to any individual 16 years of age or over but under 18 years of age for the operation of any motor vehicle other than a passenger vehicle or a motor cycle or motor bicycle used solely for purposes of pleasure and owned by such individual or his parent or guardian: *Provided*, That enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a government vehicle and are qualified to drive, and upon proving to the satisfaction of the director of traffic that they are familiar with the traffic regulations of the District of Columbia.

(b) Each operator's permit shall (1) state the name and address of the holder, together with such other matter as the commissioners or their designated agent may by regulation prescribe, and (2) contain his signature and space wherein the police court judges or their subordinates are required to note convictions of violations of sections 40-605, 40-609, 40-610.

(c) Any individual to whom has been issued a permit to operate a motor vehicle shall have such permit in his immediate possession at all times when operating a motor vehicle in the District and shall exhibit such permit to any police officer when demand is made therefor. Any individual failing to comply with the provisions of this subdivision shall upon conviction thereof, be fined not less than \$2 nor more than \$40: *Provided*, That this shall not apply to transient visitors from states in the Union which do not require drivers' permits.

(d) Permits issued in accordance with the provisions of this chapter to individuals in possession of operators' permits issued to such individuals in the District prior to May 2, 1925, may be issued with or without the examination and practical demonstration provided in subdivision (a) of this section, as the director may deem advisable.

(e) No individual shall operate a motor vehicle in the District, except as provided in section 40-303, without first having obtained an operator's permit issued under the provisions of this chapter. *Provided*, That operators of Federal Government-owned vehicles stationed outside of the District of Columbia shall not be required to have or obtain the oper-

ators' permits referred to above while operating such vehicles within the limits of the District of Columbia on transient or temporary official business of the Federal Government. Any individual violating any provision of this subdivision shall, upon conviction thereof, be fined not more than \$500 or imprisoned for not more than six months, or both.

(f) Nothing in this chapter shall relieve any individual from compliance with section 47-2331 (e) of this Code. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231.)

#### COMPILER'S NOTES

Act March 3, 1925, 43 Stat. 1121, ch. 443, § 17 provided that § 7 (this section) should take effect sixty days after its enactment.

The act approved January 29, 1913 cited in paragraph (f) amended § 7, paragraph 11, of the act approved July 1, 1902. Section 7 was later amended in its entirety by act of July 1, 1932, 47 Stat. 555, ch. 386, so that the same subject matter is now contained in paragraph 31 (e) (§ 47-2431 (e) in this code).

"This chapter" referred to in this section will be found in §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623 and 11-1407.

#### AMENDMENTS

Prior to the 1926 amendment, this section provided for the annual renewal of operators' permits and prescribed fees of \$1 and \$2. The 1926 amendment also added the third sentence in paragraph (a); added "which do not require drivers' permits" at the end of paragraph (c); changed paragraph (d) which prior thereto related to the issuance without charge of temporary permits to expire on March 31, 1936, to persons holding permits issued prior to that act; and reduced the penalty in paragraph (e) from "not more than one year" to "not more than six months."

The act of 1936 also provided, "(g) This act shall become effective immediately upon passage, and promptly thereafter the director shall commence the call of outstanding permits and the reissuance thereof in accordance with the provisions of this act, and shall complete such reissuance within a period of one year."

The 1929 act added the proviso to paragraph (a).

The 1931 act inserted "commissioners or their designated agent" in lieu of "director." This act became effective July 1, 1931.

The 1939 act added the proviso in paragraph (e).

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25-127. Commissioners' power to make rules and regulations not inconsistent with chapter 1 of this title, § 40-105.

Definition of "this chapter" and other terms used, § 40-602.

Fees and disposition thereof, § 40-103 and notes.

Licensing provisions of this section are not affected by provisions for licensing motor vehicles generally, § 40-105.

Metropolitan Police may not perform any functions under this chapter, except enforcement thereof, § 40-603.

Power of Commissioners to make rules and regulations for issuance and revocation or suspension of operators' permits, § 40-603.

Prosecution of violations of this chapter, § 40-603.

Rules and regulations concerning motor vehicles generally, § 40-603 and notes.

#### NOTES TO DECISIONS

##### EXCLUSIVE POWERS OF CONGRESS

Congress, as to the District of Columbia, has express power to exercise exclusive legislation in all cases whatsoever, thus possessing the combined powers of a general and a state government in all cases where legislation is possible. When and how it shall delegate or distribute authority to make detailed regulations under the police



power are questions which Congress may determine for itself. *LaForest v. Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

#### FINES

Fine of \$275 with commitment to jail for sixty days on default of payment, held not excessive. *Dorsey v. Peak* (58 App. D. C. 64, 24 Fed. (2d) 892).

#### GOVERNMENT EMPLOYEES

Traffic regulations apply to United States employees, driving government automobiles. *Grososon v. District of Columbia* (55 App. D. C. 122, 2 Fed. (2d) 924).

There is no exception in favor of the vehicles of the Post Office Department, and the manifest purpose of the acts does not imply such an exception. *White v. District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

#### PERMIT IN POSSESSION

Holder of a permit is required to have it in his immediate possession when operating a motor vehicle and exhibit the same to any police officer when demand is made therefor. *Dorsey v. Peak* (58 App. D. C. 64, 24 Fed. (2d) 892).

#### SUSPENSION OF PERMIT

Failure to prove that the permit had not been restored before the date of arrest was immaterial, even though the information contained no averment of it, as such averment was mere surplusage, and the burden of proof respecting it did not rest on the prosecution. *Chesevoir v. District of Columbia* (58 App. D. C. 268, 29 Fed. (2d) 798).

Action of the Commissioners in suspending petitioner's permit was not based upon illegally delegated power. *LaForest v. Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

#### § 40-302 [6: 250]. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided*, That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further*, That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further*, That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen: *Provided further*, That any individual whose permit shall be denied, suspended, or revoked by the commissioners or their agent may, within thirty days after such denial, revocation, or suspension is ordered, if application for a review by the commissioners of an order for revocation or suspension has not been filed, or in case such application has been filed, within thirty days after decision of the Commissioners, apply to any

justice of the United States Court of Appeals for the District of Columbia for a writ of error to review the order of the Commissioners or their agent complained of or the decision of the Commissioners. Said court is authorized to promulgate rules governing the application for the writ, and the record and proceedings thereon, and to affirm, modify, or reverse the order of the Commissioners or their agent or the decision of the Commissioners, where the writ is allowed pursuant hereto; and the decision of said court shall be final: *And provided further*, That the application to said court for a writ of error shall not operate as a stay of such order of the Commissioners or their agent or the decision of the Commissioners.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least six months after the revocation except in the discretion of the Commissioners or their designated agent.

(c) The Commissioners of the District of Columbia, or their designated agent, may suspend or revoke the right of any nonresident person as defined in section 40-303, to operate a motor vehicle in the District of Columbia, for any cause they or their agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately: *Provided*, That such order of suspension or revocation shall take effect ten days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Any individual found guilty of operating a motor vehicle in the District during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended under this act shall, for each such offense, be fined not less than \$100 nor more than \$500, or imprisoned not less than 30 days nor more than one year, or both. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; May 15, 1936, 49 Stat. 1273, ch. 393.)

#### COMPILER'S NOTES

Subsection (c) of this section as amended in 1936 was § 245a of title 6 in the Fifth Supplement to the 1929 Code of the District of Columbia.

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623 and 11-1407.

#### AMENDMENTS

Prior to the 1926 amendment paragraph (a) of this section provided that the director could in his discretion revoke or suspend the operator's permit of any person convicted of a violation but contained no provision for a hearing.

The 1931 amendment substituted "commissioners or their designated agent" for "director"; and in subdivision (a) substituted "five days" for "ten days" in the second proviso; omitted from the second proviso "but if the director or his assistant, such order shall thereupon be vacated;" and added the third proviso. This amendment became effective July 1, 1931.

The 1936 act amended paragraph (c) by adding the proviso and giving the right to revoke for any cause, this



right being previously given only upon conviction of a violation.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25-127.  
Definition of "this act" and other terms used, § 40-602.  
Revocation and suspension of licenses and permits generally, § 40-402 and notes.

#### NOTES TO DECISIONS

##### FOREIGN REGISTRATION AFTER SUSPENSION

One whose operator's permit in the District of Columbia had been revoked was properly convicted of driving in the District during the suspension period though he had become a resident of Virginia and had obtained registration and operator's licenses from that state. *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163, revg. 59 App. D. C. 79, 33 Fed. (2d) 375).

##### OPERATING VEHICLE AFTER REVOCATION

Conviction for operating a motor vehicle after revocation of license was affirmed, and it was not necessary for the prosecution to show that no new permit had been issued. *Chesevoir v. District of Columbia* (58 App. D. C. 268, 29 Fed. (2d) 798).

§ 40-303 [6: 245]. Nonresidents exempt from registration—Period of exemption.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, be exempt from compliance with section 40-301 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District. Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the Commissioners or their designated agent have previously found that a similar privilege is extended to legal residents of the District by such state, territory, or possession of the United States, or foreign country or political subdivision thereof. The Commissioners or their designated agent shall from time to time ascertain such privileges and cause his findings to be promulgated.

(b) Any operator of a motor vehicle who is not a legal resident of the District and who does not have in his immediate possession an operator's permit issued by a state, territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless (1) the laws of the state, territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit or (2) he has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of section 40-301. Any individual who violates any provision of this subdivision shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2.)

#### COMPILER'S NOTE

Section 17 (a) of the act of March 3, 1925, 43 Stat. 1126, ch. 443, provided that this section should take effect 60 days after its enactment.

#### AMENDMENT

The 1931 amendment inserted "commissioners or their designated agent" in lieu of "director." This amendment became effective July 1, 1931.

#### CROSS REFERENCES

Definition of terms, § 40-602.

See note to § 40-301.

Section 25-127 refers to this section.

#### NOTES TO DECISIONS

##### CONSTRUCTION OF PRIOR ACT

In the first part of this act the word "registration" is applied to the vehicle and the word "licensing" to the operator; and in the latter part the words "licensed or registered" should be treated as used in the same relation as their noun forms in the first part. *King v. District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

The meaning of this act being doubtful, the District's interpretation thereof as evidenced by its agreement with Virginia as to operation of a motor vehicle in the District by a person of that State should prevail. *King v. District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

##### DUTY OF NONRESIDENT TO OBEY REGULATIONS

This act does not relieve a nonresident operator of amenability to valid traffic regulations. *King v. District of Columbia* (51 App. D. C. 160, 277 Fed. 562). This case was in effect overruled on another point by *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

This section does not exempt a nonresident from compliance with the laws of the District of Columbia when, while a resident of the District, his driver's permit was revoked under § 40-302 and he is subject to punishment under that section. *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163).

##### EVASION OF REVOCATION

One may be convicted of operating a motor vehicle without a license who procures a Virginia license after his District license has been revoked, and drives in the District during its unexpired period. *District of Columbia v. Fred* (281 U. S. 49, 74 L. Ed. 694, 50 Sup. Ct. 163, revg. 59 App. D. C. 79, 33 Fed. (2d) 375), and in effect overruling *King v. District of Columbia* (51 App. D. C. 160, 277 Fed. 562).

## Chapter 4.—OWNERS' FINANCIAL RESPONSIBILITY ACT

### Sec.

- 40-401. Financial responsibility of owners and operators of motor vehicles for damages—This chapter not to repeal existing traffic laws.
- 40-402. Suspension of motor-vehicle operator's permit and registration certificate—Proof of ability to respond in damages—Provisions as to chauffeurs, operators, or members of household of non-registered owners—Judgments or orders to be reported.
- 40-403. Suspension of operator's permit and registration certificate—Judgments against nonresidents—Duty of clerk of court to certify copy of judgment to commissioners—Suspension for other judgment after proof furnished—What constitutes satisfaction of judgment—Permission to pay in instalments—Operator deemed to be agent of owner—Withdrawal of nonresident's privilege to drive vehicle after final judgment for damages—Service of process on nonresident.



Sec.

- 40-404. Proof of ability to respond in damages, what constitutes—Additional certificates for additional vehicles—Certificates not to be canceled except upon ten days' notice to Commissioners—Action on same to be brought in name of District of Columbia—Exemption of such money from attachment or execution.
- 40-405. Commissioners to be notified of cancelation or expiration of insurance or bond—Suspension of permit on failure to furnish other proof of ability before expiration date.
- 40-406. Director of vehicles and traffic to furnish operating record—Fees.
- 40-407. Director of vehicles and traffic to furnish injured person evidence of ability of owners or operator to respond in damages.
- 40-408. Suspended person to return operator's permit to director of vehicles and traffic—Duty of Metropolitan Police to secure possession—Penalty for failure to return permit.
- 40-409. Authority of Commissioners to cancel evidence of insurance after three years—Substitution of other evidence of ability for money—Return of money.
- 40-410. Exemption of persons required to make other provision for injury or damage.
- 40-411. Penalty for forging—Evidence of guilt.
- 40-412. Meaning of "Motor-vehicle liability policy"—Coverage—Liability under Workmen's Compensation Law and to property in charge of insured excepted—Alternative provisions—Minimum limits—Additional coverage permitted—Other provisions not contrary to sections 40-401 to 40-416 hereof permitted—Separate policies for personal injury and property damage permitted—Approval of form of policy by Commissioner of Insurance—Statutory provisions—Same need not be contained in policy.
- 40-413. Definitions.
- 40-414. Commissioners to make rules and regulations.
- 40-415. Plaintiff not prevented from relying upon other processes.
- 40-416. Saving clause.

**§ 40-401 [6:255]. Financial responsibility of owners and operators of motor vehicles for damages—This chapter not to repeal existing traffic laws.**

This chapter shall in no respect be considered as a repeal of any of the provisions of the Traffic Acts for the District of Columbia but shall be construed as supplemental thereto. (May 3, 1935, 49 Stat. 166, ch. 89, § 1.)

**COMPILER'S NOTE**

The Traffic Acts are sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623 and 11-1407.

**§ 40-402 [6:255a]. Suspension of motor-vehicle operator's permit and registration certificate—Proof of ability to respond in damages—Provisions as to chauffeurs, operators, or members of household of nonregistered owners—Judgments or orders to be reported.**

The motor-vehicle operator's permit and all of the registration certificates of any person who shall by a final order or judgment have been convicted of or shall have forfeited any bond or collateral given for a violation of any of the following provisions of law, to wit—

Driving while under the influence of intoxicating liquor or narcotic drugs, as provided in section 40-609, commonly known as the Traffic Acts;

Leaving the scene of an automobile accident in which personal injury occurs without making identity known, as provided in section 40-609;

A conviction of an offense in any other State, which if committed in the District of Columbia would be a violation of any of the aforesaid provisions of the Traffic Acts of the District of Columbia; shall be suspended by the Commissioners of the District of Columbia or their designated agent and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in his name until he shall give proof of his ability to respond thereafter in damages resulting from the ownership or operation of a motor vehicle and arising by reason of personal injury to or death of any one person of at least \$5,000, and, subject to the aforesaid limit for each person injured or killed, of at least \$10,000 for such injury to or the death of two or more persons in any one accident, and for damage to property of at least \$1,000 resulting from any one accident. Such proof in said amounts shall be furnished for each motor vehicle owned or registered by such person. If any such person shall fail to furnish said proof, his operator's permit and registration certificates shall remain suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in his name until such time as said proof be given. If such person shall not be a resident of the District of Columbia the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be withdrawn until he shall have furnished such proof: *Provided*, That in case of both residents and nonresidents, however, if it shall be duly established to the satisfaction of the said Commissioners or their designated agent, and the said Commissioners or their designated agent shall so find (a) that any such person so convicted, or who shall have pled guilty or forfeited bond or collateral, was, upon the occasion of the violation upon which such conviction, plea, or forfeiture was based, a chauffeur or motor-vehicle operator, however designated, in the employ of the owner of such motor vehicle; or a member of the same family and household of the owner of such motor vehicle, and (b) that there was not, at the time of such violation, or subsequent thereto, up to the date of such finding, any motor vehicle registered in the District of Columbia in the name of such person convicted, entering a plea of guilty or forfeiting bond or collateral, as aforesaid, then in such event, if the person in whose name such motor vehicle is registered shall give proof of ability to respond in damages, in accordance with the provisions of this chapter (and the said Commissioners or their designated agent shall accept such proof from such person), such chauffeur or other person, as aforesaid, shall thereupon be relieved of the necessity of giving such proof in his own behalf. It shall be the duty of the clerk of the court in which any such judgment or order is rendered or other action taken to forward immediately to the said commissioners or their designated agent a certified copy or transcript thereof, which said certified copy or transcript shall be prima facie evidence of the facts therein stated. (May 3, 1935, 49 Stat. 166, ch. 89, § 2.)



## CROSS REFERENCES

Revocation or suspension for failure to satisfy civil obligations, § 40-403.

Revocation or suspension of licenses or permits for violation of Uniform Narcotic Drug Act, § 33-418.

Revocation or suspension of nonresidents operator's permit, § 40-302, sub. (c).

Revocation or suspension of operator's permit, § 40-302.

Revocation, suspension or refusal of licenses for unsafe vehicles, § 40-205.

## NOTES TO DECISIONS

## COVERAGE OF INSURANCE

Where policy of liability insurance by its own terms "does not cover any liability for death sustained by named insured" the financial responsibility act was applicable, where the insured was killed in her own automobile driven by another and the administratrix of named insured could not recover. *Hepburn v. Pennsylvania Indem. Corp.* (109 Fed. (2d) 833).

§ 40-403 [6: 255b]. Suspension of operator's permit and registration certificate—Judgments against nonresidents—Duty of clerk of court to certify copy of judgment to Commissioners—Suspension for other judgment after proof furnished—What constitutes satisfaction of judgment—Permission to pay in installments—Operator deemed to be agent of owner—Withdrawal of nonresident's privilege to drive vehicle after final judgment for damages—Service of process on nonresident.

The operator's permit and all of the registration certificates of any person, in the event of his failure to satisfy every judgment arising from an accident, or accidents, happening subsequently to the effective date of this chapter (August 1, 1935), and which shall have become final by expiration, without appeal, of the time within which appeal might have been perfected or by final affirmance on appeal, rendered against him by a court of competent jurisdiction in the District of Columbia or any State, or in a District Court of the United States, for damages on account of personal injury, or damages to property resulting from the ownership or operation of a motor vehicle by him, his agent, or any other person with the express or implied consent of the owner, shall be forthwith suspended by the said Commissioners or their designated agent upon receiving a certified copy of such final judgment or judgments from the court in which the same is or are rendered showing such judgment or judgments to have been still unsatisfied more than thirty days after the same became final, and shall remain so suspended and shall not be renewed, nor shall any other motor vehicle be thereafter registered in his name while any such judgment remains unstayed, unsatisfied, and subsisting, nor until every such judgment is satisfied or discharged, except by a discharge in bankruptcy, and until the said person gives proof of his ability to respond in damages, as required in section 40-404, for future accidents. It shall be the duty of the clerk of the court in which any such judgment is rendered to forward immediately upon the expiration of said thirty days to the said Commissioners or their designated agent a certified copy of such judgment or a transcript thereof. In the event the defendant is a nonresident, it shall be the duty of the said Commissioners or their designated agent to transmit to the Commissioner of motor vehicles (or officer in charge of the issuance of operators' permits and registra-

tion certificates) of the State of which the defendant is a resident a certified copy of the said judgment. If after such proof has been given any other such judgment shall be recovered against such person for any accident occurring before such proof was furnished, and after the effective date of this chapter (August 1, 1935), such permit and certificates shall again be and remain suspended while any such judgment remains unsatisfied and subsisting: *Provided, however*, That (1) when \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount for personal injury to or the death of one person as the result of any one accident; (2) when, subject to the limit of \$5,000 for each person, the sum of \$10,000 has been credited upon any judgments rendered in excess of that amount for personal injury to or the death of more than one person as the result of any one accident; or (3) when \$1,000 has been credited upon any judgment or judgments rendered in excess of that amount for damage to property as the result of any one accident resulting from the ownership or operation of a motor vehicle by such judgment debtor, his agent, or any other person, with his express or implied consent, then and in such event such payment or payments shall be deemed a satisfaction of such judgment or judgments for the purposes of this section only: *And provided further*, That a judgment debtor to whom this section applies may, for the sole purpose of giving authority to the Commissioners or their designated agent to authorize the judgment debtor to operate a motor vehicle thereafter, on due notice to the judgment creditor, apply to the court in which the trial judgment was obtained for the privilege of paying such judgment in instalments, and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order, fixing the amounts and times of payment of the instalments. While the judgment debtor is not in default in payment of such instalments, the Commissioners or their designated agent upon his giving proof of ability to respond in damages for future accidents, as herein provided, may, in their discretion, restore or refrain from suspending his operator's permit and registration certificate or certificates; but such permit and certificate or certificates shall be suspended as hereinbefore provided if and when the Commissioners or their designated agent are satisfied that the judgment debtor has failed to comply with the terms of the court order.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall, in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner.

If any such motor-vehicle owner or operator shall not be a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation



within the District of Columbia of any motor vehicle owned by him shall be withdrawn, while any final judgment procured against him for damages, including personal injury or death caused by the operation of any motor vehicle, in the District of Columbia or elsewhere, shall be unstayed, unsatisfied, and subsisting, for more than thirty days, and until he shall have given proof of his ability to respond in damages for future accidents as required in section 40-404.

The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the director of vehicles and traffic or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the director of vehicles and traffic or in his office, and such service shall be sufficient service upon the said nonresident: *Provided*, That the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court, in defending the action in the District of Columbia: *And provided further*, That notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by section 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the director of vehicles and traffic. (May 3, 1935, 49 Stat. 167, ch. 89, § 3; August 24, 1937, 50 Stat. 751, ch. 753, § 1.)

#### AMENDMENT

The 1937 act struck out "in excess of \$100" following "or damages to property.", in the first sentence.

#### CROSS REFERENCE

Revocation or suspension of licenses and permits, § 40-402 and notes.

#### NOTES TO DECISIONS

##### ACCIDENT OCCURRING BEFORE EFFECTIVE DATE

The Automobile Financial Responsibility Law cannot be applied to a collision occurring before its effective date. *Smith v. Doyle* (69 App. D. C. 60, 98 Fed. (2d) 341).

Prior to passage of the statute imposing on the owner of a car liability for the acts of any person who drives it with his consent, a corporation was not liable for an accident of its driver merely because it had entrusted its car to him. *Balinovic v. Evening Star Newspaper Co.* ((App.-D. C.), 113 Fed. (2d) 505).

In accident occurring before enactment of this section, a corporation was not liable for damages where the driver of its car at the time of the collision was engaged in chasing a traffic violator under direction of a policeman who was riding on the running board. *Balinovic v. Evening Star Newspaper Co.* ((App.-D. C.), 113 Fed. (2d) 505).

##### AGENCY BASED ON CONSENT

Congress intended to establish a new rule of liability in which agency is based on consent. *Forrester v. Jerman* (67 App. D. C. 167, 90 Fed. (2d) 412).

##### AGENT OF OWNER

Owner of car was liable in damages for injury from accident which occurred when her car was being delivered to her by employee of a garage with which she had a monthly storage and delivery contract. *Jones v. King* ((App.-D. C.), 113 Fed. (2d) 522).

##### RESIDENT

Statute does not apply where person was resident of District of Columbia at time of accident and later moved from the jurisdiction. *Wood v. White* (68 App. D. C. 341, 97 Fed. (2d) 646).

##### STRICTLY CONSTRUED

Statute is in derogation of common law and must be strictly construed. *Wood v. White* (68 App. D. C. 341, 97 Fed. (2d) 646).

§ 40-404 [6: 255c]. Proof of ability to respond in damages, what constitutes—Additional certificates for additional vehicles—Certificates not to be canceled except upon ten days' notice to Commissioners—Action on same to be brought in name of District of Columbia—Exemption of such money from attachment or execution.

Proof of ability to respond in damages when required by this chapter may be evidenced by the written certificate or certificates of any insurance carrier, duly authorized to do business within the District of Columbia, or in the case of a nonresident by an insurance carrier authorized to transact business in any of the several states, that it has issued to or for the benefit of the person named therein a motor-vehicle liability policy or policies as defined in section 40-412 which, at the date of said certificate or certificates, is in full force and effect and designating therein by explicit description or by other appropriate reference all motor vehicles with respect to which coverage is granted by the policy certified to. The said commissioners or their designated agent shall not accept any certificate or certificates unless the same shall cover all motor vehicles registered in the name of the person furnishing such proof. Additional certificates as aforesaid shall be required as a condition precedent to the registration of any additional motor vehicle or motor vehicles in the name of such person required to furnish proof as aforesaid. Said certificate or certificates shall certify that the motor-vehicle liability policy or policies therein cited shall not be canceled except upon ten days' prior written notice thereof to the said commissioners or their designated agent.



Such proof may be the bond of a surety company duly authorized to do business within the District of Columbia or a bond with at least two individual sureties, each owning unencumbered real estate in the District of Columbia, approved by a judge of a court of record, and filed with the said Commissioners or their designated agent, which said bond shall be conditioned for the payment of the amounts specified in section 40-402 hereof and shall not be cancelable except after ten days' written notice to the said Commissioners or their designated agent. Such bond in the case where individual sureties are offered shall contain a schedule of the real estate of said sureties and shall constitute a lien in favor of the District of Columbia upon said real estate, which lien shall exist in favor of any holder of any final judgment thereafter rendered on account of damage to property or injury to any person or persons caused by the operation of such person's motor vehicle. Said bond shall be recorded by the principal named therein among the land records of the District of Columbia before the same is filed with the Commissioners or their designated agent. If a final judgment rendered after the filing of the bond as aforesaid against the principal named in the surety or real-estate bond for damages sustained to person or property while said bond remains in force or effect shall not be satisfied within thirty days after its rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action in the name of the District of Columbia against the company or persons executing such bond.

Such proof of ability to respond in damages may also be evidence presented to the said commissioners or their designated agent of a deposit by such person with the clerk of the District Court of the United States for the District of Columbia of a sum of money, the amount of which money shall be \$11,000. The said clerk shall accept such deposit and issue a receipt therefor. But the said clerk shall not accept a deposit of money where any judgment or judgments, therefor recovered against such person as a result of damages arising from the operation of any motor vehicle, shall not have been paid in full. Such money shall be held by the said clerk to satisfy, in accordance with the provisions of this chapter, any execution issued against such person in any suit arising out of damage caused by the operation of any motor vehicle owned or operated by such person. Money so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages, including injury to property, and personal injury or death, as a result of the operation of a motor vehicle. (May 3, 1935, 49 Stat. 169, ch. 89, § 4; Aug. 24, 1937, 50 Stat. 751, ch. 753, § 2.)

#### AMENDMENT

The 1937 act struck out "over \$100 in amount" following "final judgment thereafter rendered on account of damage to property" in the second sentence of the second paragraph.

#### CROSS REFERENCE

Hospital liens, § 38-301 et seq.

§ 40-405 [6: 255d]. Commissioners to be notified of cancelation or expiration of insurance or bond—Suspension of permit on failure to furnish other proof of ability before expiration date.

The said Commissioners or their designated agent shall be notified of the cancelation or expiration of any motor-vehicle liability policy of insurance certified under the provisions of this chapter or of any surety or real estate bond at least ten days before the effective date of such cancelation or expiration. In the absence of such notice of cancelation or expiration said policy of insurance shall remain in full force and effect. Upon receipt of such notice of cancelation or expiration the said Commissioners or their designated agent shall require other evidence of ability to respond in damages, and upon failure to furnish the same before the effective date of such cancelation or expiration, the operator's permit and all of the registration certificates of the person failing to comply herewith shall be suspended by the Commissioners or their designated agent and shall remain so suspended until such other evidence of ability to respond in damages shall have been given. (May 3, 1935, 49 Stat. 170, ch. 89, § 5.)

§ 40-406 [6: 255e]. Director of vehicles and traffic to furnish operating record—Fees.

The director of vehicles and traffic shall, upon request, furnish any insurer, person, or surety a certificate abstract of the operating record of any person subject to the provisions of this chapter, which abstract shall fully designate the motor vehicles, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of a violation of any provision of any statute or regulation relating to the operation of a motor vehicle or of any injury or damage caused by such person as herein provided, the said director shall so certify. The said director shall collect for each such certificate the sum of \$1. (May 3, 1935, 49 Stat. 170, ch. 89, § 6.)

§ 40-407 [6: 255f]. Director of vehicles and traffic to furnish injured person evidence of ability of owners or operator to respond in damages.

The director of vehicles and traffic shall furnish any person who may have been injured in person or property by any motor vehicle, upon written request, with all information of record in his office pertaining to the evidence of the ability of any operator or owner of any motor vehicle to respond in damages. (May 3, 1935, 49 Stat. 171, ch. 89, § 7.)

§ 40-408 [6: 255g]. Suspended person to return operator's permit to director of vehicles and traffic—Duty of Metropolitan Police to secure possession—Penalty for failure to return permit.

Any operator or any owner whose operator's permit or certificate of registration shall have been suspended as in this chapter provided shall immediately return to the director of vehicles and traffic his operator's permit, certificate of registration, and the number plates issued thereunder. If any person shall fail to return to the said director the operator's permit, certificate of registration, and the number plates issued thereunder as provided herein, the said



director shall forthwith direct any member of the Metropolitan Police of the District of Columbia to secure possession thereof and to return the same to the office of the said director. Any person failing to return on demand such operator's permit or such certificate and number plates shall be guilty of a misdemeanor and shall be fined not more than \$100, and each day such person shall fail to return the same shall constitute a separate offense. (May 3, 1935, 49 Stat. 171, ch. 89, § 8.)

**§ 40-409 [6:255h]. Authority of Commissioners to cancel evidence of insurance after three years—Substitution of other evidence of ability for money—Return of money.**

The said Commissioners or their designated agent may cancel such bond or return such evidence of insurance, or the clerk of the District Court of the United States for the District of Columbia may, with the consent of the said Commissioners or their designated agent, return such money to the person furnishing the same, provided three years shall have elapsed since the filing of such evidence or the making of such deposit, during which period such person shall not have violated any provision of the Traffic Acts referred to in section 40-402 and provided no suit or judgment for damages on account of personal injury or damage to property resulting from the operation of a motor vehicle by him or his agent shall then be outstanding against such person; and the affidavit of such person that he has not so violated the motor vehicle laws and that there are then outstanding against him no suits or judgments for damages as aforesaid, shall be sufficient proof thereof in the absence of evidence to the contrary then before the Commissioners or their designated agent. The said Commissioners or their designated agent may direct the return of any money to the person who furnished the same upon the acceptance and substitution of other evidence of his ability to respond in damages or, at any time after three years from the expiration of the latest registration or permit issued to such person, provided no written notice shall have been filed with the director stating that such suit had been brought against such person by reason of the ownership, maintenance, or operation of a motor vehicle and upon the filing by such person with the said Commissioners or their designated agent of an affidavit that he has abandoned his residence in the District of Columbia or that he has made bona fide sale of any and all motor vehicles owned by him and does not intend to own or operate any motor vehicle in the District of Columbia for a period of one or more years. (May 3, 1935, 49 Stat. 171, ch. 89, § 9; Aug. 24, 1937, 50 Stat. 751, ch. 753, § 1.)

**AMENDMENT**

The 1937 Act struck out "in excess of \$100" after "damage to property" in the first sentence.

**§ 40-410 [6:255i]. Exemption of persons required to make other provision for injury or damage.**

Any person who by any other law of the District of Columbia is required to make provision for the

payment of loss occasioned by injury to or death of persons or damage to property shall, to the extent of such provision so made and not otherwise, be exempt from sections 40-401 to 40-416. (May 3, 1935, 49 Stat. 171, ch. 89, § 10.)

**§ 40-411 [6:255j]. Penalty for forging—Evidence of guilt.**

Any person who shall forge or, without authority, sign any evidence of ability to respond in damages as required by the said Commissioners or their designated agent in the administration of this chapter shall be fined not less than \$100 nor more than \$1,000 or imprisoned not to exceed one year, or both. (May 3, 1935, 49 Stat. 172, ch. 89, § 11.)

**§ 40-412 [6:255k]. Meaning of "Motor-vehicle liability policy"—Coverage—Liability under Workmen's Compensation Law and to property in charge of insured excepted—Alternative provisions—Minimum limits—Additional coverage permitted—Other provisions not contrary to sections 40-401 to 40-416 hereof permitted—Separate policies for personal injury and property damage permitted—Approval of form of policy by Commissioner of Insurance—Statutory provisions—Same need not be contained in policy.**

"Motor-vehicle liability policy," as used in this chapter, shall be taken to mean a policy of liability insurance issued to the person therein named as insured by an insurance carrier authorized to transact business in the District of Columbia, or in the case of a nonresident, by an insurance carrier authorized to transact business in any of the several States, which policy shall designate, by explicit description or by appropriate reference, all motor vehicles with respect to which coverage is intended to be granted by said policy, and shall insure the insured named therein and any other person using or responsible for the use of any such motor vehicle with the consent, express or implied, of such insured, against loss from the liability imposed upon such insured by law or upon such other person for injury to or death of any person, other than such person or persons as may be covered, as respects such injury or death by any Workmen's Compensation Law, or damage to property except property of others in charge of the insured or the insured's employees growing out of the maintenance, use, or operation of any such motor vehicle in the United States of America; or which policy shall, in the alternative, insure the person therein named as insured against loss from the liability imposed by law upon such insured for injury to or death of any person, other than such person or persons as may be covered as respects such injury or death by any Workmen's Compensation Law, or damage to property, except property of others in charge of the insured or the insured's employees, growing out of the operation or use by such insured of any motor vehicle, except a motor vehicle registered in the name of such insured, and occurring while such insured is personally in control, as driver or occupant, of such motor vehicle within the United States of America, to the amount or limit of \$5,000, exclusive of interest and costs, on account of injury to or death of any one person, and, subject to the



same limit as respects injury to or death of one person, of \$10,000, exclusive of interest and costs, on account of any one accident resulting in injury to or death of more than one person; and of \$1,000 for damage to property of others, as herein provided, resulting from any one accident; or a binder pending the issuance of any such policy; or an indorsement to an existing policy as hereinafter provided: *Provided*, That this section shall not be construed as preventing such insurance carrier from granting any lawful coverage in excess of or in addition to the coverage herein provided for, nor from embodying in such policy any agreements, provisions, or stipulations not contrary to the provisions of this chapter and not otherwise contrary to law: *Provided, however*, That separate concurrent policies covering, respectively, (a) personal injury or death, as aforesaid, and (b) property damage, as aforesaid, shall be considered a motor-vehicle liability policy within the meaning of this chapter.

No motor-vehicle liability policy shall be issued or delivered in the District of Columbia until a copy of the form of policy shall have been on file with the Superintendent of Insurance for at least thirty days, unless sooner approved in writing by the Superintendent of Insurance, nor if within said period of thirty days the Superintendent of Insurance shall have notified the carrier in writing that in his opinion, specifying the reasons therefor, the form of policy does not comply with the laws of the District of Columbia. The Superintendent of Insurance shall approve any form of policy which discloses the name, address, and business of the insured, the coverage afforded by such policy, the premium charged therefor, the policy period, the limit of liability, and the agreement that the insurance thereunder is provided in accordance with the coverage defined in this section as respects personal injury and death or property damage, or both, and is otherwise subject to all the provisions of this chapter.

Such motor-vehicle liability policy shall be subject to the following provisions, which need not be contained therein:

(a) The liability of any company under a motor-vehicle liability policy shall become absolute whenever loss or damage covered by said policy occurs, and the satisfaction by the insured of a final judgment for such loss or damage shall not be a condition precedent to the right or duty of the carrier to make payment on account of such loss or damage. No such policy shall be canceled or annulled as respects any loss or damage by any agreement between the carrier and the insured after the said insured has become responsible for such loss or damage, and any such cancellation or annulment shall be void. Upon the recovery of a final judgment against any person for any such loss or damage, if the judgment debtor was at the accrual of the cause of action insured against liability therefor under a motor-vehicle liability policy, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment. But the policy may provide that the

insured, or any other person covered by the policy, shall reimburse the company for payments made on account of any accident, claim, or suit involving a breach of the terms, provisions, or conditions of the policy; and further, if the policy shall provide for limits in excess of the limits designated in this section, the insurance carrier may plead against such judgment creditor, with respect to the amount of such excess limits of liability, any defenses which it may be entitled to plead against the insured. Any such policy may further provide for the prorating of the insurance thereunder with other applicable valid and collectible insurance.

(b) The policy, the written application therefor (if any), and any rider or endorsement which shall not conflict with the provisions of this chapter shall constitute the entire contract between the parties.

(c) The insurance carrier shall, upon the request of the insured, deliver to the insured for filing, or at the request of the insured shall file direct, with the said commissioners or their designated agent an appropriate certificate as set forth in section 40-404 hereof.

(d) Any carrier authorized to issue motor-vehicle liability policies as provided for in this chapter, may, pending the issuance of such a policy, execute an agreement, to be known as a binder; or may, in lieu of such a policy, issue an endorsement to an existing policy, each of which shall be construed to provide indemnity or protection in like manner and to the same extent as such a policy. The provisions of this section shall apply to such binders and endorsements. (May 3, 1935, 49 Stat. 172, ch. 89, § 12.)

#### § 40-413 [6: 255l]. Definitions.

The following words, as used in this chapter shall have the following meanings:

(a) The singular shall include the plural. The masculine shall include the feminine and neuter, as requisite.

(b) "Person" shall include individuals, partnerships, corporations, receivers, referees, trustees, executors, and administrators; and shall also include the owner of any motor vehicle as requisite, but shall not include the District of Columbia.

(c) "Motor vehicle" shall include trailers, motor-cycles, and tractors.

(d) "Public highways" shall include any street, road, or public thoroughfare. (May 3, 1935, 49 Stat. 173, ch. 89, § 13.)

#### § 40-414 [6: 255m]. Commissioners to make rules and regulations.

The said Commissioners shall make rules and regulations necessary for the administration of this chapter. (May 3, 1935, 49 Stat. 174, ch. 89, § 14.)

#### CROSS REFERENCE

Rules and regulations generally, § 40-603 and notes.

§ 40-415 [6: 255n]. Plaintiff not prevented from relying upon other processes.

Nothing herein shall be construed as preventing the plaintiff in any action at law from relying for security upon the other processes provided by law. (May 3, 1935, 49 Stat. 174, ch. 89, § 15.)



## § 40-416 [6: 255o]. Saving clause.

If any part, subdivision, or section of this chapter shall be deemed unconstitutional, the validity of its remaining provisions shall not be affected thereby. (May 3, 1935, 49 Stat. 174, ch. 89, § 16.)

## COMPILER'S NOTE

The act of May 3, 1935, 49 Stat. 174, ch. 89, § 17 provided as follows: "This act (§§ 40-401 to 40-416) shall go into effect ninety days after its passage and approval by the President of the United States."

## Chapter 5.—PUBLIC-OWNED VEHICLES

## Sec.

- 40-501. Motor vehicles to be marked.
- 40-502. Restrictions on payment of expenses of carriages or vehicles for personal or official use.
- 40-503. Section 40-502 made applicable to District of Columbia.
- 40-504. Police and fire departments—Transfer of vehicles.

## § 40-501 [20: 98]. Motor vehicles to be marked.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than three inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia." (Mar. 3, 1917, 39 Stat. 1010, ch. 160.)

## COMPILER'S NOTE

This section may be affected by § 40-614.

## CROSS REFERENCES

- Licensing and registration of publicly owned vehicles, § 40-102.
- Operators' permits for operation of publicly owned vehicles, § 40-301.
- Subject to inspection, exempted from inspection fees, § 40-204.

## § 40-502 [20: 97]. Restrictions on payment of expenses of carriages or vehicles for personal or official use.

No part of any money appropriated by any Act shall be used for purchasing, maintaining, driving, or operating any carriage or vehicle (other than those for the use of the President of the United States, the heads of the Executive Departments, and the Secretary to the President, and other than those used for transportation of property belonging to or in the custody of the United States), for the personal or official use of any officer or employee of any of the Executive Departments or other government establishments at Washington, District of Columbia, unless the same shall be specifically authorized by law or provided for in terms by appropriation of money, and all such carriages and vehicles so procured and used for official purposes shall have conspicuously painted thereon at all times the full name of the Executive Department or other branch of the public service to which the same belong and in the service of which the same are used. (Feb. 3, 1905, 33 Stat. 687, ch. 297, § 4.)

## § 40-503 [20: 97]. Section 40-502 made applicable to District of Columbia.

Section 40-502 shall apply to carriages, motor, and other vehicles owned by and used in the several branches of the government of the District of Columbia. (May 18, 1910, 36 Stat. 381, ch. 248, § 1.)

## COMPILER'S NOTE

Ever since 1929, appropriation acts for the District have provided in substance as follows:

"All motor-propelled passenger-carrying vehicles owned by the District of Columbia shall be used exclusively for 'official purposes' directly pertaining to the public services of said District, and shall be under the direction and control of the commissioners, who may from time to time alter or change the assignment for use thereof or direct the joint or interchangeable use of any of the same by officials and employees of the District, except as otherwise provided in this act; and 'official purposes' shall not include the transportation of officers and employees between their domiciles and places of employment, except as to the commissioners of the District of Columbia and in cases of officers and employees the character of whose duties makes such transportation necessary, and then only as to such latter cases when the same is approved by the commissioners: *Provided*, That no passenger-carrying automobile, except busses, station wagons, patrol wagons, and ambulances, and except as otherwise specifically authorized in this act, shall be acquired under any provision of this act, by purchase or exchange, at a cost, including the value of a vehicle exchanged, exceeding \$650." (July 15, 1939, 53 Stat. 1009, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

## § 40-504. Police and fire departments—Transfer of vehicles.

No motor vehicles shall be transferred from the police and fire departments to any other branch of the government of the District of Columbia. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)

## COMPILER'S NOTE

This section which was taken from the Appropriation Act of 1939 was repeated in the Appropriation Act of 1940.

## Chapter 6.—REGULATION OF TRAFFIC

## Sec.

- 40-601. District of Columbia Traffic Act.
- 40-602. Definitions.
- 40-603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions.
- 40-604. Parking space for Members of Congress.
- 40-605. Speeding and reckless driving.
- 40-606. Negligent homicide.
- 40-607. Negligent homicide included in manslaughter where death due to operation of vehicle.
- 40-608. Immoderate speed not dependent on legal rate of speed.
- 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.
- 40-610. Smoke screens.
- 40-611. Reporting by garage keeper of cars damaged in accidents.
- 40-612. Convictions to be reported.
- 40-613. Control over park system not affected by this chapter.
- 40-614. Repeal and saving clauses.
- 40-615. Separability of provisions.
- 40-616. Parking meters.
- 40-617. Loitering by public cabs.

## § 40-601 [6: 241]. District of Columbia Traffic Act.

This chapter may be cited as the "District of Columbia Traffic Act, 1925." (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1.)



## § 40-602 [6: 242]. Definitions.

When used in this chapter—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks;

(b) The term "court" means the police court of the District of Columbia;

(c) The term "District" means the District of Columbia;

(d) The term "Commissioners" means the Board of Commissioners of the District of Columbia;

(e) [Repealed].

(f) The term "person" means individual, partnership, corporation, or association;

(g) The term "park" means to leave any motor vehicle standing on a public highway, whether or not attended;

(h) The term "public highway" means any street, road, or public thoroughfare; and

(i) The term "this chapter" includes all lawful regulations issued thereunder by the commissioners.

(j) The term "vehicle" shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(k) Traffic shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1.)

## COMPILER'S NOTES

This section as enacted contained the following paragraph, "(c) The term 'District of Columbia Code' means the act entitled 'An act to establish a code of law for the District of Columbia approved March 3, 1901,' as amended;" this phrase appeared only in the introductory lines of those sections of the act of March 3, 1925, amending that Code.

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609, 40-610, 40-612, 40-614, 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623, and 11-1407.

## AMENDMENTS

The 1926 act added paragraphs (i) and (j).

The 1931 act repealed a paragraph of this section which provided as follows "(e) The term 'director' means the director of traffic of the District of Columbia." The 1931 act became effective July 1, 1931.

## NOTES TO DECISIONS

## CONSTRUCTION

Term "this act" includes all lawful regulations issued thereunder by the commissioners. *Smallwood v. District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

## HORSE-DRAWN VEHICLES

The director of traffic is authorized to exclude horse-drawn vehicles from arterial highways or boulevards. *District of Columbia v. Wheeler* (57 App. D. C. 106, 17 Fed. (2d) 953).

## VEHICLES INCLUDED

Vehicles are limited to those that run on the land. *McBoyle v. United States* (283 U. S. 25, 75 L. Ed. 816, 51 Sup. Ct. 340).

Commercial vehicles with solid tires. *Smallwood v. District of Columbia*, (57 App. D. C. 58, 17 Fed. (2d) 210).

§ 40-603 [6: 243]. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify, repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance and revocation of operators' permits; and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as the commissioners may designate: *Provided*, That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

(b) There is established in the government of the District of Columbia a department of vehicles and traffic, which, under the direction of the commissioners, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the commissioners. The commissioners shall appoint a director of vehicles and traffic, who shall be in charge of said department, and such other personnel as they may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The salaries of such director of vehicles and traffic and other personnel shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, § 673). The director of vehicles and traffic shall be responsible directly to the commissioners for the faithful performance of his duties and shall be subject to removal by the commissioners for cause.

(c) The Commissioners of the District of Columbia are authorized and empowered to make, modify, and enforce reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided*, That congressional tags shall be issued by the commissioners under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others.



(d) The commissioners shall cause to be levied, collected, and paid such fees for titling and retitling as they deem necessary, not to exceed the sum of \$1 for each such titling or retitling, and they shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the commissioners, under oath, and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than \$1,000 or imprisoned not more than one year, or both. If the properly designated agent of the commissioners shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the commissioners by the individual affected, such individual shall be entitled to proceed further as provided under section 40-302 (a), and jurisdiction is conferred upon the United States Court of Appeals for the District of Columbia for this purpose: *Provided*, That reasonable time for hearing be given the applicant in the first instance.

(e) The commissioners may in the administration of this chapter, section or any provision of the Traffic Acts for the District, exercise any power or perform any duty conferred on them by this chapter through such officers and agents of the District as the commissioners may designate. The commissioners are further authorized and empowered to make, modify, repeal, and enforce reasonable rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, and the establishment and location of hack stands: *Provided*, That the commissioners shall establish and locate parking areas in the vicinity of governmental establishments for use only by members of Congress and governmental officials when on official business: *Provided further*, That as to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route such vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this chapter, to regulate their schedules and their loading and unloading, to locate their stops, and all platforms and loading zones and to require the appropriate marking thereof, is vested in the Public Utilities Commission of the District of Columbia: *Provided further*, That whenever any order, rule, or regulation of the Public Utilities Commission shall be made relative to the routing of common carrier vehicles,

to the location of their stops, to the establishment or change in location of platforms, loading zones, or other spaces on the public highway to be reserved for any purpose whatsoever, or to the appropriate marking thereof, or whenever any order, rule, or regulation of the District commissioners shall be made which affects such routing, stops, platforms, zones, or spaces, said order, rule, or regulation shall, prior to promulgation, be referred to a joint board to be composed of the commissioners of the District of Columbia and the members of the Public Utilities Commission, which is hereby authorized and created. Such joint board may, by the affirmative action of any three members thereof, adopt rules and regulations which, when promulgated, shall be binding and shall have the full force and effect of law, and the engineer commissioner shall be the chairman of such joint board, and shall have but one vote. Any of said rules and regulations, after reasonable trial and within a reasonable time, may be changed by the joint board upon the request of the commissioners of the District of Columbia or of the Public Utilities Commission.

(f) The commissioners may establish and designate arterial and boulevard highways, regulate the speed of vehicles thereon, and provide for the equipment of any street, road, or highway, with control lights and/or other devices for the regulation of traffic, and make such other regulations with respect to the control of traffic as are deemed advisable.

(g) The District Commissioners are authorized to prescribe within the limitations of this chapter reasonable penalties of fine, or imprisonments not to exceed ten days in lieu of or in addition to any fine, for the violation of any rule or regulation promulgated under the authority of this chapter not otherwise herein provided for. All traffic, motor vehicle, and vehicle regulations not inconsistent herewith adopted and promulgated prior to July 1, 1931, are continued and shall remain in full force and effect until amended, altered, or revoked.

(h) All regulations promulgated under the authority of this chapter, except those made by the Public Utilities Commission under powers given it by Title 43 of this Code, shall, when adopted, be printed in one or more of the daily newspapers published in the District, and no penalty shall be enforced for any violation of any such regulation which occurs within ten days after such publication, except that whenever the commissioners of the District of Columbia deem it advisable to make effective immediately any regulation relating to parking, diverting of vehicular traffic, or the closing of streets to such traffic, the regulation shall be effective immediately upon placing at the point where it is to be in force conspicuous signs containing a notice of the regulation. The placing at or upon the public highway of any sign relating to parking or regulation of traffic, except by the authority of the commissioners of the District of Columbia or their designated agent, or of the joint board, is prohibited: *Provided*, That this restriction shall not apply to any such signs which do not purport to reserve space on the public highways and which the Public Utilities Commission may authorize under the provision of this chapter.



(i) All prosecutions for violations of this chapter, excepting section 40-610, and this act or regulations made and promulgated under the authority of this chapter shall be in the police court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. (March 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5.)

#### COMPILER'S NOTES

Paragraph (f) of this section as enacted in 1931 contains the further provision at the end "and section 14 of said Traffic Acts is hereby repealed." That section appeared in the 1929 Code of the District of Columbia as section 251 of title 6.

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-621, 11-623 and 11-1407.

#### AMENDMENTS

This section prior to amendment contained four paragraphs and provided for the appointment of a director of traffic, giving him the power to make the various regulations, beginning 50 days after the enactment of the original act, and contained provisions for the publication of such regulations and for the appointment of an additional assistant to the corporation counsel.

The 1926 act added a paragraph substantially the same as present paragraph (i) but contained the additional proviso "That nothing herein contained shall deprive any person of the right of trial by jury."

The 1931 act adopted this section in the form it now exists. This act became effective July 1, 1931.

The 1932 act added that part of the proviso in paragraph (c) following "Representative in Congress" and preceding "for their official use."

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25-127.

Authority of commissioner to make rules and regulations concerning public utilities until altered by Public Utilities Commission, § 43-209.

Commissioners may designate portions of streets and sidewalks to be used for business purposes including parking, § 7-1205.

Commissioners' power to make rules and regulations not inconsistent with chapter 1 of this title, § 40-105.

Convictions to be reported, § 40-612.

Funds for expenses of office of director, § 40-103.

General provisions concerning jurisdiction and control over public ways, § 7-102 and notes.

Other provisions for inspection of motor vehicles, § 40-201 et seq.

Other provisions for prosecution of violations of this chapter, §§ 43-907, 43-908.

Parking meters; rules and regulations, § 40-616.

Power of Commissioners to locate hack stands, §§ 1-221, 1-222.

Provision concerning financial responsibility of owners and revocation and suspension of license thereunder are supplemental to and do not repeal this chapter, § 40-401.

Regulating traffic in public parks and playgrounds, §§ 8-109, 40-613.

Rules and regulations for administration of Owners' Financial Responsibility Act, § 40-414.

Rules and regulations for registration and licensing of motor vehicles, § 40-102.

Rules and regulations for the inspection of motor vehicles, § 40-207.

Rules and regulations for traffic in public parks, playgrounds and reservations, § 40-613.

Rules and regulations generally, § 1-226 and notes.

#### NOTES TO DECISIONS

##### IN GENERAL

Traffic Act, as amended, delegates to the commissioners authority to make rules and regulations in relation to traffic on the public highways, and to the Director of Parks authority to make regulations in relation to traffic on the roads in the public parks within the District; and to provide for punishment for violations by proceedings in the police court at instance of corporation counsel and to exclude United States Attorney from any prosecutions except provision involving smoke-screen felony. *Persham v. United States* (70 App. D. C. 116, 104 Fed. (2d) 249).

##### CONSTITUTIONALITY

This section is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. *La Forest v. Board of Comrs. of District of Columbia* (67 App. D. C. 396, 92 Fed. (2d) 547).

##### GOVERNMENT-OWNED VEHICLES

Traffic laws of District govern as to mail trucks over orders of Post Office Department. *White v. District of Columbia* (55 App. D. C. 197, 4 Fed. (2d) 163).

##### PEDESTRIANS' RIGHT OF WAY

Under the regulations of this act pedestrians are given the right of way at all crosswalks except at controlled crossings. *Griffith v. Slaybaugh* (58 App. D. C. 237, 29 Fed. (2d) 437).

##### "PICK-UP AND DELIVERY" OF RAILROADS

In a mandamus action brought by a railroad company to compel the Public Utilities Commission to act on the railroad company's petition for designation of a route for alleged "pick-up and delivery service," relief was denied until the railroad company obtained a certificate of convenience and necessity from the Interstate Commerce Commission. *United States ex rel. Arlington & F. Auto R. Co. v. Elgen* (68 App. D. C. 392, 98 Fed. (2d) 264).

The question of what constitutes a terminal district is so largely one of fact and so far involves considerations calling for the expert knowledge in technical matters of transportation, that a railroad company seeking by mandamus to require the Public Utilities Commission to designate a route for alleged "pick-up and delivery service" within railroad terminal districts, should pursue its remedy before the Commerce Commission rather than the courts. *United States ex rel. Arlington & F. Auto R. Co. v. Elgen* (68 App. D. C. 392, 98 Fed. (2d) 264).

##### PROSECUTION

By (i) last paragraph Congress intended that all prosecutions for violations of the traffic act, except for the violation of the smoke-screen provision in section eleven should be at the instance of the corporation counsel and in the name of the District of Columbia. *District of Columbia v. Moyer* (68 App. D. C. 98, 93 Fed. (2d) 527).

##### VALIDITY AND REASONABLENESS

Regulations prohibiting use of vehicles with solid tires on certain arterial streets were valid and reasonable. *Smallwood v. District of Columbia* (57 App. D. C. 58, 17 Fed. (2d) 210).

Regulations prohibiting speed in excess of 15 miles an hour on certain bridges were valid and reasonable. *District of Columbia v. Bailey* (57 App. D. C. 151, 18 Fed. (2d) 367).

Regulations which prevent parking of automobiles on certain streets between 2 a. m. and 8 a. m. to enable the snow-removal machinery of the city to function is a reasonable and proper regulation. *District of Columbia v. Smith* (68 App. D. C. 104, 93 Fed. (2d) 650).

§ 40-604 [6: 243a]. Parking space for Members of Congress.

The Commissioners of the District of Columbia are authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public build-



ings in such district for the use of Members of Congress engaged on public business. (July 15, 1939, 53 Stat. 1033, ch. 281, § 1; June 12, 1940, 54 Stat. 334, ch. 333, § 1.)

#### COMPILER'S NOTE

This section taken from the Appropriation Act of 1939 was repeated in the Appropriation Act of 1940, and is not part of the Traffic Acts of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and is therefore not included in the term "this chapter" as used elsewhere herein.

#### CROSS REFERENCE

Congressional tags, issuance by Commissioners, § 40-603 (c).

### § 40-605 [6: 246]. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this chapter.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the first offense be fined not more than \$250 or imprisoned not more than three months, or both; and upon conviction for the second or any subsequent offense committed within two years from the date of any such previous offense such individual shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall upon conviction for the first offense be fined not more than \$25; upon conviction for a second offense committed within one year from the date of conviction of the first offense such individual shall be fined not more than \$100; and upon conviction for the third or any subsequent offense committed within one year from the date of conviction of the first offense such individual shall be fined not more than \$300 or be imprisoned not more than ninety days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317; June 24, 1936, 49 Stat. 1901, ch. 749.)

#### COMPILER'S NOTES

The act of 1931 became effective July 1, 1931.

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-621, 11-623 and 11-1407.

#### AMENDMENTS

The act of 1925 provided for a speed limit of 22 miles an hour except in outlying districts.

The act of 1926 provided for the regulation of speed in outlying districts.

The act of 1931 amended paragraph (a) as it now exists. The act of 1931 also changed the definition of reckless driving in paragraph (b).

The penalties for reckless driving were originally a fine of \$25 to \$100 and imprisonment of 10 to 30 days for first offense; and a fine of \$100 to \$1,000 and imprisonment of 30 days to 1 year for a subsequent offense. The

1931 act removed the lower limits on the fines and imprisonment permitted and included the provision that the subsequent offense must be committed within two years.

The 1936 act raised the upper limits for a first offense to those now provided in this section.

The penalties for other offenses provided by this section were originally a fine of from \$5 to \$25 for a first offense; a fine of from \$25 to \$100 for a second offense; and a fine of from \$100 to \$500 and imprisonment of 30 days to one year for subsequent offenses.

The 1931 act removed the lower limits on the fines and imprisonments and changed the upper limits on third and subsequent offenses as now provided in this section. The 1931 act also included the provisions that subsequent offenses must be committed within one year of the first offense.

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25-127.

Convictions to be reported, § 40-612.

Definition of "this act" and other terms used, § 40-602.

Power of commissioners to make rules and regulations, § 40-603.

#### NOTES TO DECISIONS

##### JURY TRIAL

One charged with driving an automobile recklessly, and so as to endanger property and individuals, has a right to a jury trial. *District of Columbia v. Colts* (282 U. S. 63, 75 L. Ed. 177, 51 Sup. Ct. 52, affg. 59 App. D. C. 224, 38 Fed. (2d) 535).

##### REGULATIONS OF DIRECTOR OF TRAFFIC

Provisions of this act not in conflict with regulations of director of traffic, as to speed of vehicles on certain bridges and highways. *District of Columbia v. Bailey*, (57 App. D. C. 151, 18 Fed. (2d) 367).

### § 40-606 [6: 246a]. Negligent homicide.

Any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000 or both.

It shall be the duty of the coroner of the District of Columbia, upon any inquisition taken before him which results in the jury finding that negligent homicide, as defined herein, has been committed on the deceased, to require such witnesses as he thinks proper to give recognizance to appear and testify, or in default thereof to be committed to jail for appearance, in either the District Court of the United States for the District of Columbia or the police court of the District of Columbia, and the coroner shall return to either said court the said inquisition, testimony, and recognizance or order by him taken or given. (Mar. 3, 1901, ch. 854, § 802 (a), as added June 17, 1935, 49 Stat. 385, ch. 266.)

#### COMPILER'S NOTE

This section and the next two succeeding sections (§§ 40-607, 40-608) are not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443), and therefore are not included in the term "this chapter" as used elsewhere herein.

#### CROSS REFERENCE

Though this section was enacted after the Alcoholic Beverage Control Act, it would seem that such act is inapplicable by its express provision, § 25-127.



§ 40-607 [6: 246b]. Negligent homicide included in manslaughter where death due to operation of vehicle.

The crime of negligent homicide defined in section 40-606 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide. (Mar. 3, 1901, ch. 854, § 802 (b), as added June 17, 1935, 49 Stat. 385, ch. 266.)

#### CROSS REFERENCE

Alcoholic Beverage Control Act, see note to § 40-606.  
See Compiler's Note to § 40-606.

§ 40-608 [6: 246c]. Immoderate speed not dependent on legal rate of speed.

In any prosecution under sections 40-606 or 40-607, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle. (Mar. 3, 1901, ch. 854, § 802 (c), as added June 17, 1935, 49 Stat. 385, ch. 266.)

#### CROSS REFERENCE

Alcoholic Beverage Control Act, see note to § 40-606.  
See Compiler's Note to § 40-606.

§ 40-609 [6: 247]. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

(a) Any person operating a motor vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the motor vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other motor vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the motor vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

Any operator whose motor vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the first offense, be fined not more than \$500, or shall be imprisoned not more than six months, or both; and upon the conviction of his second or subsequent offense, shall be fined not more than \$1,000, or shall be imprisoned not more than one year, or both.

Any operator whose motor vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the first offense, be fined not

more than \$100, or be imprisoned not more than thirty days, or both; and for the second or any subsequent offense, be fined not more than \$300, or be imprisoned not more than ninety days, or both.

(b) No individual shall, while under the influence of any intoxicating liquor or narcotic drug, operate any motor vehicle in the District. Any individual violating any provision of this subdivision shall upon conviction for the first offense be fined not more than \$500 or imprisoned not more than six months, or both; and upon conviction for the second or any subsequent offense be fined not more than \$1,000 or imprisoned not more than one year, or both. Upon conviction of a violation of any provision of this paragraph the clerk of the court shall certify forthwith such conviction to the designated agent of the commissioners, who shall thereupon revoke the operator's permit of such individual.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this chapter had not been enacted. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4.)

#### COMPILER'S NOTES

This section as amended by act of 1931 became effective July 1, 1931.

"This chapter" referred to in this section will be found in §§ 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to §§ 11-601, 11-616, 11-617, 11-621, 11-623, and 11-1407.

#### AMENDMENT

Prior to amendment in 1931 subsection (a) of this section provided for the giving of the information upon striking "any individual or any vehicle" or where the vehicle has been struck by another vehicle and provided only for the giving of information concerning the driver including the registration and operators permit numbers. The 1931 act also added all that part of the first paragraph of subsection (a) beginning with "if such owner or operator is not present."

The penalties provided for in subsection (a) were originally, for personal injury, a fine of \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$500 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment. The penalties for damage to a vehicle prior to the 1931 amendment were a fine of not more than \$500 or imprisonment of not more than six months for a first offense and a fine of not more than \$1,000 or imprisonment of not more than one year for a subsequent offense.

The penalties provided for in subsection (b) were originally a fine of from \$100 to \$500 and imprisonment of 60 days to 6 months for a first offense, and a fine of \$200 to \$1,000 and imprisonment of 6 months to 1 year for a subsequent offense. The 1931 act removed the lower limits of fines and imprisonment.

The act of 1931 also added the present subsection (c) and included former paragraph (c) as the last sentence in present paragraph (b).

#### CROSS REFERENCES

Alcoholic Beverage Control Act inapplicable, § 25-127.  
Convictions to be reported, § 40-612.



## NOTES TO DECISIONS

## FAILURE TO STOP AND GIVE ASSISTANCE

Fact that defendant stopped and parked her automobile at the nearest available point, when informed of the accident, at a distance not exceeding 150 feet from the point where the collision occurred and furnished all the information, is all that the statute requires. *Oden v. District of Columbia* (65 App. D. C. 50, 79 Fed. (2d) 175).

While defendant testified that he intended to return and give the assistance and information required, the jury was at liberty to disbelieve him under the circumstances, and to conclude from his conduct, as testified to by the District's witnesses, that he did not so intend. *Seher v. District of Columbia* (68 App. D. C. 207, 95 Fed. (2d) 118).

## § 40-610 [6: 248]. Smoke screens.

(a) No individual shall knowingly—

(1) Have in his possession any device designed to cause the emission from a motor vehicle of a dense mass of smoke commonly called a smoke screen;

(2) Use or permit the use of any such device in the operation of any motor vehicle; or

(3) Have in his possession or control any motor vehicle equipped with any such device or specially fitted for the attachment thereto of any such device.

(b) Any individual violating any provision of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than five years. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11.)

## CROSS REFERENCES

Definitions of terms used, § 40-602.

Section 25-127 refers to this section.

See notes to decisions, § 40-603. *Persham v. United States* (70 App. D. C. 116, 104 Fed. (2d) 249); *District of Columbia v. Moyer* (68 App. D. C. 93, 93 Fed. (2d) 527).

## § 40-611 [6: 249]. Reporting by garage keeper of cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than \$25 nor more than \$100 for each offense. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12.)

## CROSS REFERENCES

Definitions of terms used, § 40-602.

Section 25-127 refers to this section.

## § 40-612 [6: 250a]. Convictions to be reported.

All convictions under sections 40-302, 40-603, 40-605, and 40-609 shall be reported by the clerk of the court to the commissioners or their designated agent. (Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5.)

## CROSS REFERENCE

Alcoholic Beverage Control Act inapplicable, § 25-127.

## § 40-613 [6: 252]. Control over park system not affected by this chapter.

Nothing contained in this chapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this chapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16 (b); July 3, 1926, 44 Stat. 835, ch. 760, § 3.)

## COMPILER'S NOTE

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623, and 11-1407.

## AMENDMENTS

Act of 1926 amended this section by striking out the words "Chief of Engineers" and inserting in lieu thereof the words "Director of Public Buildings and Public Parks of the National Capital."

By Executive Order 6166, June 10, 1933, the office was changed to National Parks, Buildings, and Reservations.

Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

## CROSS REFERENCES

Definition of "this chapter" and other terms used, § 40-602.

Regulating traffic in public parks and playgrounds, § 8-109.

Rules and regulations generally, § 40-603 and notes.

## § 40-614. Repeal and saving clauses.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District," approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled "Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes," approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of section 20 of the Act entitled "An Act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes," approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this chapter and any liability arising under such provi-



sions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16 (a) (c).)

#### COMPILER'S NOTES

Subsections (a) and (b) were respectively subsections (a) and (c) of the act as enacted. The act of 1887 referred to is set forth in §§ 1-224 and 1-225. Subsection (b) of § 16 of the act of 1925 is § 40-613. The act of 1917 referred to has been repealed.

"This chapter" referred to in subsection (b) this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623, and 11-1407.

Section 20 of the act entitled "An act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes" was repealed by act of Jan. 24, 1934, 48 Stat. 334, ch. 4, § 28.

#### EFFECTIVE DATE

Act of March 3, 1925, 43 Stat. 1126, ch. 443, § 17, provided as follows:

"SEC. 17. (a) The following provisions of this act shall take effect sixty days after its enactment: Sections 7 (§ 40-301) and 8 (§ 40-303) and subdivision (a) of section 16 (§ 40-614).

"(b) Except as provided in subdivision (a) of this section and in subdivision (b) of section 6 (§ 40-603), the provisions of this act shall take effect upon its enactment."

#### § 40-615 [6: 253]. Separability of provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18.)

#### COMPILER'S NOTE

"This chapter" referred to in this section will be found in sections 40-301 to 40-303, 40-601 to 40-603, 40-605, 40-609 to 40-615, and as amendments to sections 11-601, 11-616, 11-617, 11-621, 11-623, and 11-1407.

#### § 40-616. Parking meters.

The Commissioners of the District of Columbia are hereby authorized and empowered, in their discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said commissioners, such installations to be limited to a linear footage not to exceed the total of the perimeters of four normally sized squares in such District; and said commissioners are authorized and empowered to make and enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the commissioners may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

The Commissioners are further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the

fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and thereafter such meters or devices shall become the property of said District, and all fees collected shall be paid to the collector of taxes for deposit in the treasury of the United States to the credit of the revenues of said District. (April 4, 1938, 52 Stat. 192, ch. 62, § 11.)

#### COMPILER'S NOTE

This section is not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and therefore is not included in the term "this chapter" as used elsewhere herein.

#### CROSS REFERENCE

Rules and regulations generally, § 40-603 and notes.

#### § 40-617 [6: 254]. Loitering by public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who wilfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the police court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Commissioners of the District of Columbia are hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and are hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section. (July 11, 1919, 41 Stat. 104, ch. 7, § 12.)

#### COMPILER'S NOTE

This section is not part of the Traffic Act of 1925 (act of Mar. 3, 1925, 43 Stat. 1119, ch. 443) and is therefore not included in the term "this chapter" as used elsewhere herein.

#### CROSS REFERENCE

Power of Commissioners to locate hackstands, §§ 1-221, 1-222.

#### NOTES TO DECISIONS

##### POLICE REGULATIONS

This section supersedes police regulation, art. 4, § 3, adopted April 1918. *Willis v. District of Columbia* (54 App. D. C. 191, 295 Fed. 1012).

##### PUBLIC STREET

As the space upon which the cab was standing at the time of the arrest of its driver is stipulated to have been the private property of the Washington Terminal Company, by whose authority and permission he was there, it follows that he was not then upon any public street or avenue, and consequently his presence there did not fall within the purview of an act directed against the improper use of public streets and avenues. *Reamy v. District of Columbia* (50 App. D. C. 359, 273 Fed. 323).

##### TAXICABS AT HOTELS

This section does not apply to a taxicab stationed near a hotel which was for the exclusive use of the hotel and its guests, as the cab was under jurisdiction of the Public Utilities Commission and not of the District Commissioners. *Bell v. District of Columbia* (50 App. D. C. 351, 273 Fed. 315); *Parker v. District of Columbia* (50 App. D. C. 356, 273 Fed. 320).



## Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

- Sec.  
 40-701. Definitions.  
 40-702. Lien to appear on certificate of title—Effect of other liens.  
 40-703. Entry of lien—Priority.  
 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.  
 40-705. Liens to be kept by recorder in director's office.  
 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.  
 40-707. Entry of lien on previously issued certificate.  
 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.  
 40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.  
 40-710. Possession of certificate—Satisfaction of liens.  
 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.  
 40-712. Fees.  
 40-713. Recording liens, place and method.  
 40-714. False statements as to liens, violations of law, penalties.  
 40-715. Appropriation.

### § 40-701. Definitions.

"Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

"Director" shall mean the director of vehicles and traffic of the District of Columbia, including assistants or agents duly designated by the commissioners.

"Recorder" shall mean the recorder of deeds of the District of Columbia, including assistants or agents duly designated by the recorder.

"Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the director.

"Owner" shall mean the person to whom such certificate is issued by the director.

"Lien" shall mean any right or interest in or to, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except (1) a sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it, or (2) any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

"Instrument" shall mean any written instrument signed and acknowledged by an owner creating such lien.

"Lien information" shall mean the amount, kind, date of lien, name and address of holder, and recorder's record number, if any. (July 2, 1940, 54 Stat. 736, ch. 527, § 1.)

### § 40-702. Lien to appear on certificate of title—Effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth: *Provided*, That the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle

or trailer for which a certificate is outstanding at the effective date of this chapter, or any equipment or accessories affixed thereto. The provisions of §§ 42-101 to 42-103, of the Code of Laws of the District of Columbia shall not apply to liens recorded as herein provided and a lien shall have no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with said sections or, in case of a conditional sales contract, that the purchase price of the property does not exceed \$100. (July 2, 1940, 54 Stat. 736, ch. 527, § 2.)

### § 40-703. Entry of lien—Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the recorder and shall have priority among themselves in the following order:

(a) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(b) Liens for which instruments are presented with the application for the certificate.

(c) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that one or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(d) As between two or more instruments presented for recording without the certificate, the one first presented for recording shall have priority. (July 2, 1940, 54 Stat. 737, ch. 527, § 3.)

### § 40-704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

An instrument shall be in writing; shall show the name and address of the holder, the trade name and engine number of the motor vehicle or the trade name and serial number, if any, of the trailer; shall be signed by the parties and acknowledged by the owner in the manner provided by law for deeds of real estate. A lien shall not be entered upon a certificate unless (1) the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership; or (2) such an instrument is presented for recording pursuant to the provisions of this chapter; or (3) the lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4.)

### § 40-705. Liens to be kept by recorder in director's office.

The Commissioners of the District of Columbia shall assign to the recorder space in the office of



the director, and the recorder shall furnish and maintain the necessary furniture, equipment, cards hereinafter mentioned, and other supplies and the required personnel for the purpose of carrying out the provisions of this chapter. (July 2, 1940, 54 Stat. 737, ch. 527, § 5.)

**§ 40-706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.**

Applications for certificates, in addition to all other matters which may be required by law, shall show under oath whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the recorder from the director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application are not entitled to be entered on the certificate in the same order as they appear on the application the recorder shall return all of said papers to the director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the director, who shall thereupon deliver same to a representative of the collector of taxes of the District of Columbia, stationed in the office of the director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the director. The director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon each of two cards, the size of which shall be fixed by the director, the information stamped by the director on the face of such certificate and shall deliver such certificate, its application, cards, if any, and the identification-tag application to the recorder. If the application for title shows no liens, the recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the re-

recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on each of the said cards. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the recorder. The recorder shall then deliver both applications and the papers attached and the certificate to the director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6.)

**§ 40-707. Entry of lien on previously issued certificate.**

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the recorder in the office of the director and upon the payment of the necessary fees to the representative of the recorder of deeds of the District of Columbia in the office of the director the recorder shall accept the instruments for recording and unless he has cards covering said motor vehicle or trailer the director shall stamp cards in the manner set forth in section 40-706. The recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on each of said cards and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7.)

**§ 40-708. Assignment of lien—Form and requirement of assignment—Entry and recording of assignment—Certificate to holder of first lien.**

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the recorder's record number of the instrument, or, if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien and acknowledged by him in the manner provided by law for deeds of real estate. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the recorder of deeds of the District of Columbia in the office of the director, the recorder shall enter upon the face of the certificate and upon each of the cards hereinbefore described the recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the recorder, and, if not, the assignment shall be given a recorder's record number and filed by the recorder and such number shall be entered on the certificate and on each of the cards opposite the entry of the



information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8.)

**§ 40-709. Entry of lien or assignment where certificate is not available—Recorder to obtain certificate.**

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the recorder of the instrument or assignment the recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the recorder shall perform the same acts as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under section 40-703 (c) to a lien where the instrument is presented together with the certificate. (July 2, 1940, 54 Stat. 739, ch. 527, § 9.)

**§ 40-710. Possession of certificate—Satisfaction of liens.**

The record holder of the first unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within seventy-two hours, place upon the face of the certificate the recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner. Upon the satisfaction of any lien other than the first unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within seventy-two hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the recorder, surrender it to the recorder within seventy-two hours for the purpose of entering the lien or assignment thereon. (July 2, 1940, 54 Stat. 739, ch. 527, § 10.)

**§ 40-711. Satisfaction of lien—Duties of recorder—Procedure when certificate lost.**

The recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in § 40-710, shall enter on the face of the certificate and on each of the cards described in § 40-706, and on the instrument, if any, filed in the recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date.

Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. (July 2, 1940, 54 Stat. 739, ch. 527, § 11.)

**§ 40-712. Fees.**

The fee for recording liens or assignments of liens upon a certificate shall not exceed the sum of 50 cents for each lien on each automobile contained in the instrument. There shall be no fee for releasing. (July 2, 1940, 54 Stat. 739, ch. 527, § 12.)

**§ 40-713. Recording liens, place and method.**

The recorder shall maintain, in the space assigned to him in the office of the director, files wherein he shall file one set of the cards hereinbefore described alphabetically under the name of owner and the other under the trade name and engine number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13.)

**§ 40-714. False statements as to liens, violations of law, penalties.**

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this chapter shall be by the corporation counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (July 2, 1940, 54 Stat. 739, ch. 527, § 14.)

**§ 40-715. Appropriation.**

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the commissioners of the District of Columbia are authorized to include in their annual estimates provision for all the expenses of the office of the director and recorder incident to such purposes, and for personnel subject to the limitations of the Classification Act of 1923 (U. S. C., title 5, § 673). (July 2, 1940, 54 Stat. 740, ch. 527, § 15.)

**COMPILER'S NOTE**

Section 16 of the act approved July 2, 1940, 54 Stat. 740, ch. 528, provided as follows: "The provisions of this act shall become effective January 1, 1941. Nothing herein contained shall affect existing liens on motor vehicles and trailers, or any equipment or accessories affixed thereto recorded prior to the effective date of this act."



## TITLE 41.—PARTNERSHIPS

Chap.	Sec.	
1. Limited partnerships-----	41-101	
2. Dissolution and payment of debts-----	41-201	

### Chapter 1.—LIMITED PARTNERSHIPS

Sec.	
41-101.	Limited partnerships—For what purposes to be formed.
41-102.	"General" and "special partners" defined.
41-103.	Number of special partners.
41-104.	Liability of special partners.
41-105.	Certificate to be signed.
41-106.	Acknowledgment and recording.
41-107.	Affidavits to be filed.
41-108.	Partnership not formed until certificate and affidavit filed.
41-109.	False statements.
41-110.	Publication.
41-111.	Effect of failure to publish.
41-112.	Affidavit as to publication.
41-113.	Renewal of partnership.
41-114.	General partnership to result from failure to properly renew.
41-115.	What shall be a dissolution.
41-116.	Effect of acts after dissolution.
41-117.	Name to be used.
41-118.	What names to be used in suits.
41-119.	Effect of use in firm of name of special partner.
41-120.	Who to transact business.
41-121.	Withdrawal of capital.
41-122.	Reduction of capital.
41-123.	Assignment with preferences.
41-124.	Special partner violating sections 41-122 and 41-123 liable as general partner.
41-125.	Creditors to have preference over special partner.
41-126.	Suits to be against general partners only, in what cases.
41-127.	Suits against general and special partners may be prosecuted against general partners.
41-128.	New suits against special partners after judgment against general partners.
41-129.	Judgment prima facie evidence—Merger of partnership debt in judgment.
41-130.	Voluntary dissolution.
41-131.	Liability of the general partners.

§ 41-101 [23: 5]. Limited partnerships—For what purposes to be formed.

Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business within the District may be formed by two or more persons upon the terms, with the rights and powers, and subject to the conditions and liabilities prescribed in this chapter. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498.)

§ 41-102 [23: 6]. "General and special partners" defined.

Such partnership may consist of one or more persons, who shall be called general partners and who shall be jointly and severally responsible as general partners are by law, and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital to the common stock, who shall be called special partners. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1499.)

§ 41-103 [23: 7]. Number of special partners.

The number of special partners shall in no partnership exceed six. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1500.)

§ 41-104 [23: 8]. Liability of special partners.

The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them to the capital. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1501.)

§ 41-105 [23: 9]. Certificate to be signed.

Persons desirous of forming a limited partnership shall make and severally sign a certificate which shall contain—

First. The name of firm under which such partnership is to be conducted.

Second. The general nature of the business intended to be transacted.

Third. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners and their respective places of residence.

Fourth. The amount of capital which each special partner shall have contributed to the common stock.

Fifth. The period at which the partnership is to commence and the period at which it is to terminate. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1502.)

§ 41-106 [23: 10]. Acknowledgment and recording.

The certificate shall be acknowledged by the several persons signing the same before a judge of any court in the District, or before any notary public, and such acknowledgments shall be made and certified in the same manner as the acknowledgments of deeds of land, and when so acknowledged and certified shall be filed in the office of the clerk of the District Court of the United States for the District of Columbia, and shall be recorded by him at large in a book kept for that purpose, open to public inspection. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1503.)

§ 41-107 [23: 11]. Affidavits to be filed.

At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as directed in section 41-106 an affidavit of one or more of the general partners shall also be filed therewith in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1504.)

§ 41-108 [23: 12]. Partnership not formed until certificate and affidavit filed.

No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affi-



davit shall have been made and filed, as directed by sections 41-105, 41-106 and 41-107. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1505.)

**§ 41-109 [23: 13]. False statements.**

If any false statement, not the result of accident or mistake, shall be made in the certificate or affidavit required by sections 41-105, 41-106, and 41-107, all the persons interested in the partnership shall be liable for all the engagements of such partnership as general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1506.)

**§ 41-110 [23: 14]. Publication.**

The partners shall publish the terms of the partnership, when registered, three times a week for at least four weeks immediately after such registry in two newspapers to be designated by the clerk of the District Court of the United States for the District of Columbia, the first publication to appear within one week after the registry. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507.)

**§ 41-111 [23: 15]. Effect of failure to publish.**

If the publication prescribed in section 41-110 be not made, the partnership shall be deemed general. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508.)

**§ 41-112 [23: 16]. Affidavit as to publication.**

The affidavits of the publication of the notice required by section 41-110 by the editor or publishers of the newspapers in which the same shall have been published shall be filed with the clerk directing the same, and shall be prima facie evidence of the facts therein contained, the affidavit of any one editor or publisher of each newspaper being sufficient. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1509.)

**§ 41-113 [23: 17]. Renewal of partnership.**

Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, acknowledged, and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner required by the provisions of this chapter for its original formation. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1510.)

**§ 41-114 [23: 18]. General partnership to result from failure to properly renew.**

Every partnership which shall be renewed and continued otherwise than as provided in this chapter shall be deemed a general partnership. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1511.)

**§ 41-115 [23: 19]. What shall be a dissolution.**

Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1512.)

**§ 41-116 [23: 20]. Effect of acts after dissolution.**

Every partnership which shall in any manner be carried on after any such alteration shall have been

made shall be deemed a general partnership, unless renewed as a special partnership under the provisions of section 41-113. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1513.)

**§ 41-117 [23: 21]. Name to be used.**

The business of the partnership may be conducted under the name of any one or more of the general partners, and with or without the addition of the word Co. or company, as the parties may determine. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1514.)

**§ 41-118 [23: 22]. What names to be used in suits.**

In any action or suit brought on any contract or engagement of the partnership, or to enforce any liability of the same, the general partners whose names shall be used in the firm or business shall be the only necessary defendants; and any judgment or decree recovered against such defendants shall have the same legal effect and operation and execution thereon shall be enforced and have like effect against the partnership assets as if the judgment or decree had been recovered against the general partners. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1515.)

**CROSS REFERENCES**

Parties to actions, § 13-401 and notes.  
Partners as witnesses, § 14-304.

**§ 41-119 [23: 23]. Effect of use in firm of name of special partner.**

If the name of any special partner shall be used in the firm with his privity, he shall be deemed a general partner. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1516.)

**§ 41-120 [23: 24]. Who to transact business.**

The general partners only shall transact the business, and if a special partner shall interfere contrary to this provision he shall be deemed a general partner, but he may from time to time examine into the state and progress of the partnership concerns and advise as to their management. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1517.)

**§ 41-121 [23: 25]. Withdrawal of capital.**

No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits, or otherwise, during the continuance of the partnership, but any partner may annually receive lawful interest on the sum so contributed by him if the payment of such interest shall not reduce the original amount of such capital; and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits. (Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1518.)

**§ 41-122 [23: 26]. Reduction of capital.**

If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest, on being notified thereof. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1519.)



**§ 41-123 [23: 27]. Assignment with preferences.**

Every sale, assignment, or transfer of any property or effects of a partnership, or of any general partner, made by such partnership or general partner when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any general partner, with the intent of giving preference to any creditor of such partnership or insolvent partner, and every judgment confessed, lien created, or security given by such partnership or general partner under the like circumstances and with the like intent, shall be void as against the creditors of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1520.)

**§ 41-124 [23: 28]. Special partner violating sections 41-122 and 41-123 liable as general partner.**

Every special partner who shall violate any of the provisions of sections 41-122 and 41-123 or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1521.)

**§ 41-125 [23: 29]. Creditors to have preference over special partner.**

In case of the insolvency or bankruptcy of a partnership no special partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1522.)

**§ 41-126 [23: 30]. Suits to be against general partners only, in what cases.**

All suits respecting the business of the partnership shall be brought by and against the general partners only, subject to the provisions of section 41-118, except in those cases in which provision is made in this chapter that special partners shall be deemed general partners and special partnerships general partnerships, in which cases all persons so becoming general partners may be joined with those originally general partners in any suit brought against such partnerships. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1523.)

**CROSS REFERENCE**

Parties to action, § 41-118 and notes.

**§ 41-127 [23: 31]. Suits against general and special partners may be prosecuted against general partners.**

If, in any case or suit brought against general and special partners, it shall appear at the trial of the case that the special partners or any one of them are not liable to the suit of the plaintiff, the court may proceed to judgment or decree against the partners who may appear to be liable, in the same manner as if such partners were the only parties defendant to the suit, excepting that the partners who may be deemed not liable shall recover their legal costs against the plaintiffs. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1524.)

**§ 41-128 [23: 32]. New suits against special partners after judgment against general partners.**

If, in any case or suit brought against general and special partners, the creditor shall recover a judgment or obtain a decree against the general partners only, and shall afterward discover that special partners, or some one or more of them, have become liable as general partners, he may bring a new suit against such special partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1525.)

**§ 41-129 [23: 33]. Judgment prima facie evidence—Merger of partnership debt in judgment.**

In the suits mentioned in sections 41-127 and 41-128 the judgment recovered shall be prima facie evidence of the amount due by the partnerships, and the partnership debt shall not be merged in any judgment or decree recovered or obtained against any partner or partners as against any other partner or partners. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1526.)

**§ 41-130 [23: 34]. Voluntary dissolution.**

No dissolution of such partnership by act of the partners shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, unless in consequence of the death of one of the partners or insolvency of the partnership or of one of the general partners, nor until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the District Court of the United States for the District, and published once a week for four weeks in two newspapers to be designated by the clerk, which publication may be proved by affidavit, and recorded as hereinbefore prescribed for the publication of the certificate for the formation of such partnership. (Mar. 3, 1901, 31 Stat. 1417, ch. 854, § 1527.)

**§ 41-131 [23: 35]. Liability of the general partners.**

The general partners shall be liable to account to each other and to the special partners for the management of the concern, both at law and in equity. (Mar. 3, 1901, 31 Stat. 1418, ch. 854, § 1528.)

**Chapter 2.—DISSOLUTION AND PAYMENT OF DEBTS****Sec.**

- 41-201. Composition with creditors on dissolution.
- 41-202. Memorandum of exoneration may be furnished—  
Use of memorandum in evidence or to release judgment.
- 41-203. Other partners not discharged.
- 41-204. Partners' right of contribution.

**§ 41-201 [23: 1]. Composition with creditors on dissolution.**

Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such a composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494.)



CROSS REFERENCES

Dissolution of limited partnership, §§ 41-115, 41-130.  
Separate compromise by one of several joint debtors,  
§ 16-906.

NOTES TO DECISIONS

NEGOTIABLE INSTRUMENTS

It is not within the general scope of the authority of one partner to make or endorse negotiable paper in the firm name. *Presbrey v. Thomas* (1 App. D. C. 171).

§ 41-202 [23: 2]. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.

Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495.)

§ 41-203 [23: 3]. Other partners not discharged.

Such compromise or composition with an individual member of a firm shall not be held to discharge

the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this title not been passed, except that they shall not set up the discharge of one individual as a discharge of the other partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496.)

§ 41-204 [23: 4]. Partners' right of contribution.

Such compromise or composition of a member of a firm with a creditor of such firm shall in no wise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497.)



## TITLE 42.—PERSONAL PROPERTY

Chap.	Sec.
1. Recordation of instruments.....	42-101

### Chapter 1.—RECORDATION OF INSTRUMENTS

#### Sec.

- 42-101. Recording of bills of sale, chattel mortgages, and deeds of trust.
- 42-102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder.
- 42-103. Conditional sales.

§ 42-101 [25: 177]. Recording of bills of sale, chattel mortgages, and deeds of trust.

No bill of sale, mortgage, or deed of trust to secure a debt of any personal chattels whereof the vendor, mortgagor, or donor shall remain in possession, shall be valid or effectual to pass the title therein, except as between the parties to such instruments and as to other persons having actual notice of it, unless the same be executed, acknowledged, and within ten days from the date of such acknowledgment filed in the office of the recorder of deeds and the said filing of such instrument therein as aforesaid as to third persons not having notice of it as aforesaid shall be operative only from the time within the said ten days when it is delivered to said recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

#### AMENDMENT

The 1925 amendment struck out "recorded in the same manner of deeds of real estate."

#### CROSS REFERENCES

- Application to motor vehicle liens §§ 40-701, 40-702.
- Bulk Sales Law, §§ 28-1701 to 28-1705.
- Concealing, removing, or converting mortgaged property, § 22-1209.
- Introduction into evidence of records of written instruments, §§ 14-401, 14-402.
- Negotiable warehouse receipt for mortgaged property, penalty, § 28-2106.
- Uniform Sales Act, §§ 28-1101 to 28-1608.
- Warehouse receipts, uniform law, §§ 28-1801 to 28-2205.

#### STATUTORY REFERENCE

- Bills of lading, U. S. C., title 49, ch. 4.

#### NOTES TO DECISIONS

##### ACTUAL NOTICE

The sale is not void as to persons who had "actual notice of it" before their rights accrued. *Splain v. B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

##### DATE OF ACKNOWLEDGEMENT

"Record is required within 10 days after \* \* \* the act of acknowledgement. There is nothing in the law which requires that acknowledgment of the instrument be of its date, and, unless the delay in acknowledging be unreasonable and intervening rights accrue during the period of delay the recorded instrument will have the same force and effect as if acknowledged on the date of its execution." *R. P. Andrews Paper Co. v. Southern Soda Fountain Co.* (46 App. D. C. 84).

Rights under the mortgage do not relate back to the time of the execution of the deed where mortgage was not acknowledged or recorded until after mortgagor had contracted new debts with third parties without notice.

*In re Nolan Motor Co., Inc.* ((D. C.-D. C.), 25 Fed. Supp. 186).

The code regarding recordation of chattel mortgages does not require acknowledgment simultaneous with the execution thereof. *In re Nolan Motor Co., Inc.* ((D. C.-D. C.), 25 Fed. Supp. 186).

#### FAILURE TO DELIVER POSSESSION

Failure to deliver possession to the buyer did not make the sale void, but was a fact to be considered by the jury in determining whether or not the sale was fraudulent. *Splain v. B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

#### LANDLORD'S LIEN

Quaere: Whether landlord's lien is embraced within provision requiring recordation of conditional sales contract. *R. P. Andrews Paper Co. v. Southern Soda Fountain Co.* (46 App. D. C. 84).

#### UNRECORDED BILL OF SALE

Failure to record bill of sale does not make sale void as to marshal who levied on the property with notice of the transfer of title. *Splain v. B. F. Goodrich Rubber Co.* (53 App. D. C. 300, 290 Fed. 275).

#### UNRECORDED TRANSFER

Unrecorded transfer is good inter partes. *V. G. Fisher Art Co. v. Hutchins* (41 App. D. C. 156), citing *Colbert v Baetjer* (4 App. D. C. 416).

§ 42-102 [25: 178]. Instruments relating to chattels need not be transcribed—Instruments retained by recorder.

It shall not be necessary for the recorder of deeds to spread such instruments upon the records of his office, but the same shall be indexed in the manner as deeds to real estate are indexed, and said instruments shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of said office. For filing and indexing such aforesaid instruments the recorder of deeds shall collect \$1 each. (Mar. 3, 1901, ch. 854, § 546a, added Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

#### COMPILER'S NOTE

This section (paragraph 2 of § 546) appeared for the first time in the 1925 act. Paragraph 1 was an amendment to § 546 of D. C. 1901 (§ 42-101 herein).

#### CROSS REFERENCES

- Application to motor vehicle liens, § 40-702.
- See notes to § 42-101.

§ 42-103 [25: 179]. Conditional sales.

No conditional sale of chattels in virtue of which the property is delivered to the purchaser, but by the terms of which the title is not to pass until the price of said chattels is fully paid, where the purchase-price exceeds \$100, shall be valid as against third persons acquiring title to said property from said purchaser without notice of the terms of said sale, unless the terms of said sale are reduced to writing and signed by the parties thereto and acknowledged by the purchaser and filed in the office of the recorder of deeds of the District of Columbia, and said writing shall be indexed as if the purchaser



were a mortgagor and the seller a mortgagee of such chattels, and shall be operative as to third persons without actual notice of it from the time of being filed. And for filing and indexing such an instrument, the recorder of deeds shall collect \$1. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 547; June 30, 1902, 32 Stat. 533, ch. 1329; Mar. 3, 1925, 43 Stat. 1103, ch. 417.)

#### AMENDMENTS

The 1902 amendment added the words "when the purchase price exceeds \$100."

The 1925 amendment added the words "where the purchase price exceeds \$100," deleted the words "and recorded in the same manner as a chattel mortgage, as hereinabove provided," and inserted in lieu thereof the words "and filed in the office of the recorder of deeds of the District of Columbia," deleted the words "so recorded," and inserted in lieu thereof the word "filed" at the end of the first sentence, and added the last sentence.

#### CROSS REFERENCES

Application to motor vehicle liens, § 40-702.

Criminal penalty for concealing, removing, or converting property held under conditional sales contract, § 22-1406.

See notes to § 42-101.

#### NOTES TO DECISIONS

##### ASSIGNEE OF LEASE

Assignee of lease held not third person "acquiring title to said property from said purchaser." *Palm v. Bachrach* (55 App. D. C. 302, 5 Fed. (2d) 125).

##### CONSTRUCTION AND APPLICATION

Quaere: Whether creditor of vendee in contract of conditional sale, or of purchaser (without notice) from him, are entitled to the benefits of this section. *Baum v. Knabe Mfg. Co.* (33 App. D. C. 237).

"Since this statute restricts the rights of property by regulating its use its scope may not be broadened by construction." *Gill v. Kahl-Holt Co.* (47 App. D. C. 53).

Lease construed as conditional sales agreement. *Stern v. Drew* (52 App. D. C. 191, 285 Fed. 925, distinguishing *Randolph & Co. v. Columbia Graphophone Co.* 45 App. D. C. 146). See also *Smith v. Gilmore* (7 App. D. C. 192), as to determination of intention of parties to such agreements.

#### ELECTION OF REMEDIES

Election of remedies as affecting rights under conditional bill of sale. *Smith v. Gilmore* (7 App. D. C. 192)

#### LANDLORD'S LIEN

Unrecorded conditional sale contract of chattels brought upon leased premises is superior to landlord's lien on chattels. *Stern Co. v. Rosenberg* (67 App. D. C. 99, 89 Fed. (2d) 843).

#### ORAL AGREEMENT

An assignee of after-acquired property takes it subject to the conditions with which it is encumbered, notwithstanding that such encumbrance is an oral conditional sales agreement. *Gill v. Kahl-Holt Co.* (47 App. D. C. 53)

#### TITLE WITHHELD

"A sale and delivery of personal property on condition that the title remain in the vendor until performance of the condition authorizes the vendor, in case of failure to fulfill the conditions, to repossess himself of the property, not only from the vendee but from those holding under him. \* \* \* Such a condition may exist either in the case of a sale for cash or on time." *Minnix Co. v. L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357).

Title does not pass until condition is fulfilled. *Minnix Co. v. L. C. Smith & Bros. Typewriter Co.* (33 App. D. C. 357). See *Wall v. De Mitkiewicz* (9 App. D. C. 109).

#### UNRECORDED CONDITIONAL SALE

When property under conditional sale contracts is reserved in the vendor until the purchase price is paid, such contracts are valid even though unrecorded except as against third persons acquiring title without notice of the terms of sale. *Baum v. Knabe Mfg. Co.* (33 App. D. C. 237).

Unrecorded conditional sale was valid against judgment, creditor levying upon buyer's property. The provision that it should not be valid against third persons without notice applies only in favor of subsequent purchasers and mortgagees. *Higgins v. Central Cigar Co.* (59 App. D. C. 9, 32 Fed. (2d) 400).

Unrecorded conditional sale contract superior to levy on an automobile, the latter not transferring any title. *C. I. T. Corp. v. Carl* (66 App. D. C. 232, 85 Fed. (2d) 809).

#### WAREHOUSEMAN'S LIEN

Conditional sale contract, not of record, is inferior to warehouseman's lien. *Fidelity Storage Co. v. Reliable Stores Corp.* (63 App. D. C. 83, 69 Fed. (2d) 569).



## TITLE 43.—PUBLIC UTILITIES

Chap.		Sec.
1.	Definition of terms and application of law .....	43-101
2.	Creation of Public Utilities Commission—Members—Counsel—Employees.....	43-201
3.	Service, valuation, accounts.....	43-301
4.	Rates, examinations, investigations, and hearings.....	43-401
5.	Sale and merger of utilities.....	43-501
6.	Gas and electric corporations.....	43-601
7.	Orders and court proceedings.....	43-701
8.	Issuance of securities.....	43-801
9.	Penal provisions.....	43-901
10.	General provisions.....	43-1001
11.	Electric light and power companies— Special acts .....	43-1101
12.	Gas companies—Special acts.....	43-1201
13.	Private conduits.....	43-1301
14.	Telegraph and telephone companies.....	43-1401
15.	Water supply, assessments, and rates....	43-1501

### Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

Sec.	
43-101.	Definitions—Commission.
43-102.	Commissioner.
43-103.	Public utility.
43-104.	Service.
43-105.	Corporation.
43-106.	Person.
43-107.	Joint rates.
43-108.	Extension or extensions.
43-109.	Street railroad.
43-110.	Street railroad corporation.
43-111.	Common carrier—Exempt organizations.
43-112.	Gas plant.
43-113.	Gas corporation.
43-114.	Electric plant.
43-115.	Electrical corporation.
43-116.	Water-power company.
43-117.	Telephone corporation.
43-118.	Telephone line.
43-119.	Telegraph corporation.
43-120.	Telegraph line.
43-121.	Pipe-line company.
43-122.	Chapters 1-10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.
43-123.	Corporations subject to chapters 1-10 of this title.

#### § 43-101 [26: 1]. Definitions—Commission.

For the purpose of chapters 1-10 of this title the term "commission" when used herein shall mean the Public Utilities Commission of the District of Columbia created by chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-102 [26: 2]. Commissioner.

The term "commissioner" when used in chapters 1-10 of this title shall mean one of the members of such commission. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-103 [26: 3]. Public utility.

The term "public utility" as used in chapters 1-10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

### NOTES TO DECISIONS

#### AUTOMOBILE FOR HIRE

Owner of automobile who hires out the vehicle and his services by the hour, held not a "public utility." *Bell v. Harlan* (57 App. D. C. 255, 20 Fed. (2d) 271).

#### § 43-104 [26: 4]. Service.

The term "service" is used in chapters 1-10 of this title in its broadest and most inclusive sense. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-105 [26: 5]. Corporation.

The term "corporation" when used in chapters 1-10 of this title includes a corporation, company, association, and joint-stock company or association. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-106 [26: 6]. Person.

The word "person" when used in chapters 1-10 of this title includes an individual and a firm or co-partnership. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-107 [26: 7]. Joint rates.

The term "joint rates" when used in chapters 1-10 of this title with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-108 [26: 8]. Extension or extensions.

The term "extension or extensions" when used in chapters 1-10 of this title shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-109 [26: 9]. Street railroad.

The term "street railroad" when used in chapters 1-10 of this title includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for



compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

#### § 43-110 [26: 10]. Street railroad corporation.

The term "street railroad corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

#### § 43-111 [26: 11]. Common carrier—Exempt organizations.

The term "common carrier" when used in chapters 1-10 of this title includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Arlington and Fairfax Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of chapters 1-10 of this title, and are not included in the term "common carrier." (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412.)

#### AMENDMENTS

Act of February 25, 1916, added the following: "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia."

Act of August 21, 1916, added the following: "express companies subject to the jurisdiction of the Interstate Commerce Commission."

Act of August 26, 1916, added all beginning with "and the Washington and Old Dominion" and ending with "District of Columbia."

#### NOTES TO DECISIONS

##### TAXICAB COMPANY

A taxicab company is a common carrier within this act and subject to the jurisdiction of the Public Utilities

Commission. *Terminal Taxicab Co. v. Kutz* (241 U. S. 252, 60 L. Ed. 984, 36 Sup. Ct. 583).

#### § 43-112 [26: 12]. Gas plant.

The term "gas plant" when used in chapters 1-10 of this title includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

#### § 43-113 [26: 13]. Gas corporation.

The term "gas corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

#### § 43-114 [26: 14]. Electric plant.

The term "electric plant" when used in chapters 1-10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters, easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

#### § 43-115 [26: 15]. Electrical corporation.

The term "electrical corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or water-power stations, ex-



cept where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-116 [26: 16]. Water-power company.

The term "water-power company" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of water power for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-117 [26: 17]. Telephone corporation.

The term "telephone corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-118 [26: 18]. Telephone line.

The term "telephone line" when used in chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, cross arms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-119 [26: 19]. Telegraph corporation.

The term "telegraph corporation" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-120 [26: 20]. Telegraph line.

The term "telegraph line" when used in chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, cross-arms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-121 [26: 21]. Pipe-line company.

The term "pipe-line company" when used in chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

#### § 43-122 [26: 22]. Chapters 1-10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.

Chapters 1-10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1-10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

### NOTES TO DECISIONS

#### GARAGE BUSINESS

A taxicab company which has the exclusive right to taxicab passengers from the Washington terminal, and the exclusive right to the taxicab business out from certain hotels, is to this extent, under the jurisdiction of the Public Utilities Commission, but the Commission has no jurisdiction over its garage business, or rates charged on such business. *Terminal Taxicab Co. v. Kutz* (241 U. S. 252, 60 L. Ed. 984, 36 Sup. Ct. 583).

#### SINGLE OPERATOR

An operator of a single passenger sedan is not a public utility and does not come under the jurisdiction of an order of Public Utilities Commission requiring financial protection of his patrons. *Bell v. Harlan* (57 App. D. C. 255, 20 Fed. (2d) 271).

#### § 43-123 [26: 23]. Corporations subject to chapters 1-10 of this title.

Corporations formed to acquire property or to transact business which would be subject to the provisions of chapters 1-10 of this title, and corporations possessing franchises for any of the purposes contemplated by chapters 1-10 of this title shall be deemed to be subject to the provisions of chapters 1-10 of this title, although no property may have been acquired, business transacted, or franchises exercised. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)



## Chapter 2.—CREATION OF PUBLIC UTILITIES COMMISSION—MEMBERS—COUNSEL—EMPLOYEES

Sec.

- 43-201. Members—Eligibility of Commissioners—Oath.
- 43-202. Quorum—Investigations, inquiries, may be undertaken by any Commissioner.
- 43-203. Acts of prior commission validated.
- 43-204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.
- 43-205. People's counsel—Duties, term of office, salary, qualifications.
- 43-206. Employees—Compensation—Expenses—Expenditures.
- 43-207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.
- 43-208. Orders as to repairs—Improvement in equipment, service.
- 43-209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

### § 43-201 [26: 126]. Members—Eligibility of Commissioners—Oath.

The Public Utilities Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Engineer Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate. Each of the appointed commissioners shall receive a salary at the rate of \$7,500 per annum. Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No commissioner, other than the said Engineer Commissioner of the District of Columbia, shall, during his term of office, hold any other public office. The commissioners of the District of Columbia shall furnish the Public Utilities Commission with suitable offices and quarters. No person, other than the said Engineer Commissioner of the District of Columbia, shall be eligible to the office of commissioner of the Public Utilities Commission who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Utilities Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall

become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the District Court of the United States for the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1.)

#### CROSS REFERENCES

Constitutionality of act, § 43-1003.  
 Liberal construction of act, § 43-1003.  
 Saving clause; laws, orders, rules and regulations prior to this act; proceedings pending, §§ 43-1005, 43-1006.

### § 43-202 [26: 127]. Quorum—Investigations, inquiries may be undertaken by any Commissioner.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Any investigation, inquiry, or hearing within the powers of the commission may be made or held by any commissioner, whose acts and orders, when approved by the commission, shall be deemed to be the order of the commission. The commission shall have power to adopt and publish rules and regulations for the administration of the provisions of chapters 1-10 of this title, including the conduct of its investigations, inquires, hearings, and other proceedings. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97; Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1.)

#### AMENDMENT

The 1926 amendment deleted the words "To govern its proceedings and to regulate the mode and manner of all investigations and hearings pertaining to public utilities" and inserted in lieu thereof the words now following the word "rules" in the last sentence.

#### CROSS REFERENCES

Investigation of injuries or deaths occurring in the operation of a utility company, § 43-1001.  
 Jurisdiction and control over street railroads and bus lines, § 44-201 et seq.  
 Powers over motor carriers; liability insurance or bond required, § 44-301.  
 Prosecution of violations of rules and regulations, §§ 43-906 to 43-908.  
 Recommendations of changes in utility laws, § 43-304.  
 Rules and regulations by Commissioners of the District, § 43-209.  
 Rules and regulations for street car fenders, § 44-204.  
 Rules and regulations for testing gas and electric meters, § 43-603.  
 Rules and regulations for testing meters and measuring devices, § 43-320.  
 Rules and regulations generally, § 1-226.  
 Rules and regulations governing proceedings, investigations, inspections, tests, audits, and hearings before the Commission, § 43-402.  
 Rules and regulations governing sliding scale of rates and dividends, § 43-317.  
 Rules and regulations of Interstate Commerce Commission, § 43-207.  
 Rules, regulations, and forms for accounts of new construction, § 43-316.  
 Rules, regulations, and forms for computing depreciation, § 43-315.



## NOTES TO DECISIONS

## ADMINISTRATIVE AGENCY

Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission is merely an administrative agency. *Patrick v. Smith* (60 App. D. C. 6, 45 Fed. (2d) 924)

§ 43-203 [26: 128]. Acts of prior Commission validated.

Sections 43-201 to 43-203 shall not be construed (1) to invalidate any subpoena, valuation, order, rule, regulation, or revocation, or any rescission, alteration, modification, amendment, or suspension thereof issued by the commission prior to the date on which the commissioners first appointed under section 43-201 take office; or (2) to invalidate any complaint served, or any investigation, inquiry, or hearing held or commenced, or any determination, or decision rendered by the commission prior to such date; or (3) to invalidate, abate, or discontinue any action, suit, trial, or proceeding commenced by or against such commission prior to such date. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 2.)

## CROSS REFERENCE

Other provisions for saving clause for laws, orders, rules, and regulations, and pending proceedings, §§ 43-1005, 43-1006.

§ 43-204 [26: 116]. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.

The corporation counsel of the District of Columbia shall be the general counsel of the commission and shall receive from and be paid out of the appropriations provided and to be provided for the expenses of the commission in addition to his compensation otherwise provided by law the sum of \$1,000 per annum, payable in equal monthly installments. It shall be the duty of the general counsel to represent and appear for the commission in all actions and proceedings involving any question under chapters 1-10 of this title, or under or in reference to any act, order, or proceeding of the commission, and if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and of the members thereof, and generally to perform all duties and services as attorney and counsel to the commission which the commission may reasonably require of him. The assistants to the corporation counsel shall perform such duties relating to matters arising under chapters 1-10 of this title and all other matters as the corporation counsel may prescribe. The commission may, if at any time it deems necessary, employ other attorneys at law as additional assistants to the said general counsel for the performance of such extraordinary legal services for or in behalf of the commission at such special compensation for such additional assistants as the

commission may prescribe, which said compensation shall be paid out of the appropriations provided for the expenses of the commission. The said corporation counsel and any of his assistants designated by him or by the commission shall have the right to appear and prosecute any civil, quasi criminal, or criminal case to recover any penalty, forfeiture, fine, or for the imposition of any punishment provided for in chapters 1-10 of this title whether instituted by or on behalf of the United States of America or by or on behalf of the District of Columbia or otherwise, and on every appeal provided by law. The commission may enforce its orders in any case by mandamus or other legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the corporation counsel or his assistants to represent the commission in every such proceeding. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91.)

§ 43-205 [26: 117]. People's counsel—Duties, term of office, salary, qualifications.

There shall be appointed by the President, by and with the advice and consent of the Senate, an additional counsel of the commission to be known as the people's counsel, who—

(1) Shall represent and appear for the people of the District of Columbia at all hearings of the commission and in all judicial proceedings involving the interests of users of the products of or service furnished by public utilities under the jurisdiction of the commission;

(2) Shall represent and appear for petitioners appearing before the commission for the purpose of complaining in matters of rates or service; and

(3) May investigate the service given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the commission.

(b) The term of office of the people's counsel shall be four years, and he shall receive a salary at the rate of \$7,500 a year. No person shall be appointed as people's counsel who has not been a bona fide resident of the District of Columbia continuously for a period of at least five years immediately preceding the effective date of his appointment, or who has not been engaged in the actual practice of law before the District Court of the United States for the District of Columbia for a period of at least five years. No person shall be eligible to the office of people's counsel who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia, or in any stock, bond, mortgage, security, or contract of any such public utility. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 3.)

§ 43-206 [26: 121]. Employees — Compensation — Expenses—Expenditures.

The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of chapters



1-10 of this title, and to fix and pay their compensation within the appropriations provided by Congress subject to the Classification Act of 1923 (U. S. C., title 5, ch. 13). The commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of chapters 1-10 of this title. All payments and disbursements, as provided in chapters 1-10 of this title, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by Act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95.)

#### COMPILER'S NOTE

It is not clear that the last clause of the first sentence was superseded in its entirety by the act of Mar. 4, 1923 (the Classification Law), 42 Stat. 1488, ch. 265.

§ 43-207 [26: 124]. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said commission to remain in force.

The authority vested by law in the Interstate Commerce Commission by virtue of and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" (35 Stat. 246, ch. 190), shall no longer be exercised by the Interstate Commerce Commission: *Provided*, That the orders, rules, and regulations made by the Interstate Commerce Commission by virtue of and under the said Act of Congress, approved May 23, 1908, shall continue to be in force until changed, repealed, altered, or amended by the commission created by chapters 1-10 of this title, which said commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry chapters 1-10 of this title into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

#### CROSS REFERENCES

Act of May 23, 1908, referred to in text, see §§ 44-202, 44-203, 44-206, and 44-207.

Rules and regulations generally, § 43-202 and notes.

§ 43-208 [26: 125]. Orders as to repairs—Improvement in equipment, service.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipe line, water-power plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the commission. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

#### CROSS REFERENCES

New construction, § 43-316.

Other provisions concerning care, maintenance, and repair of street cars, § 44-202 et seq.

#### NOTES TO DECISIONS

##### STREET-CAR VESTIBULES

This act did not impliedly repeal act March 3, 1905 (§ 44-205), requiring glass vestibules. *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 43-209 [26: 130]. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Utilities Commission.

All the duties, powers, and authority of the Commissioners of the District of Columbia shall continue and remain in full force and effect notwithstanding chapters 1-10 of this title; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding chapters 1-10 of this title. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the commissioners of the District of Columbia, acting as such, hereafter, notwithstanding chapters 1-10 of this title: *Provided*, That when any order of the Commission created by chapters 1-10 of this title shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Commissioners of the District of Columbia, acting as such, then and in such event the order of the Commission created by chapters 1-10 of this title



shall be given full force and effect, notwithstanding such municipal ordinance or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99.)

CROSS REFERENCES

Power of Commissioner to fix fares charged by public conveyances, §§ 1-223, 1-224.

Rules and regulations generally, § 43-202 and notes.  
Traffic regulations by joint board composed of Commissioners of the District and the Public Utilities Commission, § 40-603.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

- Sec.  
43-301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of commission.  
43-302. Use of equipment of other companies—Application to commission to require such use in event of disagreement.  
43-303. Commission to compel compliance with chapters 1-10 of this title, with laws, ordinances, and charter—Criminal liability continued.  
43-304. Proposed changes in law to be submitted to commission—Hearings—Recommendations to Congress.  
43-305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.  
43-306. Property to be valued as of time of evaluation.  
43-307. Valuation—Notice and hearing—Statement of valuation to be filed.  
43-308. Revaluation.  
43-309. Uniform accounts to be rendered—Separate account of other business may be required.  
43-310. Commission to prescribe forms of books and records.  
43-311. Commission to furnish blank forms.  
43-312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.  
43-313. Accounts to be closed annually—Verified balance sheet to be filed with commission—Copy to Congress.  
43-314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.  
43-315. Depreciation account—Rates of depreciation—Application of depreciation fund.  
43-316. Commission to keep informed of new construction—Construction account.  
43-317. Sliding scale of rates and dividends.  
43-318. Utilities to furnish accounts and reports—Information to be included.  
43-319. Annual report of commission.  
43-320. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.  
43-321. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.  
43-322. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.  
43-323. Schedule of rates to be filed—Existing rates to remain in force until changed.  
43-324. Rules and regulations affecting rates to be filed.  
43-325. Copy of rate schedule to be available for public inspection.  
43-326. Schedule of joint rates to be filed.  
43-327. Change in schedule—Notice.  
43-328. New schedules to be filed.  
43-329. Utility not to receive greater or less compensation than fixed in schedule.  
43-330. Commission may prescribe changes in form of schedule.

§ 43-301 [26:24]. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of commission.

Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2.)

CROSS REFERENCES

Constitutionality of act, § 43-1003.  
Criminal penalties for failure to obey laws or rules, regulations or orders of Commission, §§ 43-906 to 43-908.  
Illegal rates of electric power companies, § 43-1107.  
Liberal construction of act, § 43-1003.  
Power to alter unreasonable or discriminatory rate, regulation, or practice, § 43-911.  
Provisions concerning discriminatory rates, §§ 43-329, 43-902 to 43-904.  
Saving clauses for previous laws, orders, rules and regulations, and pending proceedings, § 43-203 and notes.

NOTES TO DECISIONS

GAS RATES

Commission is without power to fix rates at which gas piped from another State will be supplied to local distributing company. *Galloway v. Bell* (56 App. D. C. 172, 11 Fed. (2d) 558).

RIGHT TO COMPEL FURNISHING SERVICE

Appellant has no positive right to compel the power company to furnish service to him contrary to its own rules and regulations duly approved by the Commission, the company's right to suspend or discontinue the service in accordance with its notice can neither be controlled nor restrained. *Lewis v. Potomac Elec. Power Co.* (62 App. D. C. 63, 64 Fed. (2d) 701).

§ 43-302 [26:25]. Use of equipment of other companies—Application to commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment not in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such



conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion after hearing and notice by order in writing. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3.)

#### CROSS REFERENCES

Joint use of bridges, §§ 7-505, 7-507, 7-508, 7-511.

Joint use of certain railroad facilities, §§ 7-1213, 7-1216 to 7-1224, 44-208 to 44-212.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43-402.

Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company, § 43-1108.

§ 43-303 [26: 26]. Commission to compel compliance with chapters 1-10 of this title, with laws, ordinances, and charter—Criminal liability continued.

The commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of chapters 1-10 of this title, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it: *Provided*, That nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have power to impose any such punishment, fine, forfeiture, or penalty. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4.)

#### CROSS REFERENCES

Certified copies of orders, effect as evidence, § 43-713.

Criminal penalties, §§ 43-901 to 43-913.

Penalties and forfeitures provided by this act do not bar proceedings or prosecutions under other laws, § 43-913.

§ 43-304 [26: 27]. Proposed changes in law to be submitted to Commission—Hearings—Recommendations to Congress.

Whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility the said proposed change shall also and at the same time be submitted to the commission, which may take testimony and give a public hearing thereon, and the commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility and transmit the same to the proper committees of the Senate and House of Representatives. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 5.)

§ 43-305 [26: 28]. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

The commission shall ascertain, as soon and as nearly as practicable, the amount of money expended

in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the government of the United States or of the commissioners of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

#### CROSS REFERENCES

Application to court for instructions, § 43-704.

Payment of expenses, § 43-412.

Rates and rate making, see § 43-401 and notes.

Records, form and requisites, §§ 43-309 to 43-319.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43-402.

#### NOTES TO DECISIONS

##### GOODWILL

Court when fixing rate base valuation of street railway property on appeal from the Public Utilities Commission could properly include the goodwill of one of the companies that had previously consolidated. *Public Utilities Comm. v. Capital Trac. Co.* (57 App. D. C. 85, 17 Fed. (2d) 673).

§ 43-306 [26: 29]. Property to be valued as of time of evaluation.

The commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

#### CROSS REFERENCES

Application to court for instructions, § 43-704.

Expenses of making valuation, § 43-412.

§ 43-307 [26: 30]. Valuation—Notice and hearing—Statement of valuation to be filed.

Before final determination of such value the commission shall, after notice of not less than thirty



days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress. (Mar. 4, 1913, 37 Stat. 973, ch. 150, § 8, par. 8.)

#### CROSS REFERENCES

Payment of expenses of proceedings, § 43-412.  
Rules and regulations relative to inspections, tests, audits investigations, and hearings, § 43-402.

#### § 43-308 [26: 31]. Revaluation.

The commission may at any time, on its own initiative, make a revaluation of the property of any public utility. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9.)

#### CROSS REFERENCES

Application to court for instructions, § 43-704.  
Payment of expenses of revaluating, § 43-412.

#### § 43-309 [26: 32]. Uniform accounts to be rendered—Separate account of other business may be required.

Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of chapters 1-10 of this title shall apply with like force and effect to the books, accounts, papers, and records of such other business. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10.)

#### CROSS REFERENCES

Criminal penalties for violation of this section, § 43-905.  
Witnesses; production of books, records, and accounts; investigation of records and accounts; duty of utility companies to furnish information, records, and accounts, §§ 43-405 to 43-407.

#### § 43-310 [26: 33]. Commission to prescribe forms of books and records.

The commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers, and records. In so far as practicable for the purposes of chapters 1-10 of this title, the form prescribed shall be the form accepted by the Interstate Commerce Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11.)

#### CROSS REFERENCES

Criminal penalties, § 43-905.  
Production and examination, see note to § 43-309.

#### § 43-311 [26: 34]. Commission to furnish blank forms.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of chapters 1-10 of this title, and shall when necessary furnish such blanks to each public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12.)

#### § 43-312 [26: 35]. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission: *Provided*, That public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the commission such books, accounts, records, and papers from time to time as the commission may order. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13.)

#### CROSS REFERENCES

Production and examination, see note to § 43-309.  
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, § 43-402.

#### § 43-313 [26: 36]. Accounts to be closed annually—Verified balance sheet to be filed with commission—Copy to Congress.

The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the first day of February following such balance sheet, together with such other information as the commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the commission, and a copy thereof transmitted to Congress. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14.)

#### § 43-314 [26: 37]. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission. The agents, accountants, or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15.)

#### CROSS REFERENCES

Payment of expense of audit, § 43-412.  
Production and examination, see note to § 43-309.  
Rules and regulations, § 43-402.  
Similar provisions, § 43-404.



**§ 43-315 [26: 38]. Depreciation account—Rates of depreciation—Application of depreciation fund.**

Every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16.)

**CROSS REFERENCES**

Production and examination, see notes to § 43-309.  
Rules and regulations generally, § 43-202.

**§ 43-316 [26: 39]. Commission to keep informed of new construction—Construction account.**

The commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17.)

**CROSS REFERENCES**

Power of commission to require repairs to be made, § 43-208.  
Rules and regulations generally, § 43-202.

**§ 43-317 [26: 40]. Sliding scale of rates and dividends.**

Nothing in chapters 1-10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1-10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the

duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

**CROSS REFERENCES**

Payment of expenses of investigation, § 43-412.  
Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, § 43-911.  
Production and examination, see note to § 43-309.  
Rate making, § 43-401.  
Rules and regulations generally, § 43-202 and notes.

**NOTES TO DECISIONS**

**DEPOSITS**

Order of Public Utilities Commission which permits deposits in advance from those unable to establish financial responsibility was not discriminatory. *Riegel v. Public Utilities Comm.* (60 App. D. C. 111, 48 Fed. (2d) 1023).

**EMERGENCY FLEET CORPORATION**

The Emergency Fleet Corporation, although organized as a private corporation under District of Columbia laws, is entitled to the benefit of the provisions of the Post Roads Act of 1866 giving it special rates for telegraph service. *United States Shipping Board Emergency Fleet Corp. v. Western Union Tel. Co.* (275 U. S. 415, 72 L. Ed. 345, 48 Sup. Ct. 198).

**§ 43-318 [26: 41]. Utilities to furnish accounts and reports—Information to be included.**

Each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports, and information as shall show in itemized detail: Depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19.)

**CROSS REFERENCES**

Annual reports by street railroads, § 44-215.  
Production and examination, see note to § 43-309.  
Reports by electric power companies, § 43-1109.  
Reports by gas companies, § 43-1206.  
Rules and regulations, § 43-402 and notes.

**§ 43-319 [26: 42]. Annual report of commission.**

The commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the commission or the value of whose property has been ascer-



tained by it under the provisions of chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20.)

**§ 43-320 [26: 43]. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.**

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21.)

#### CROSS REFERENCES

Provisions for testing gas and electric meters, rules and regulations, § 43-603.

Provisions for testing quality of gas, § 43-605.

Rules and regulations generally, § 43-202 and notes.

**§ 43-321 [26: 44]. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.**

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22.)

**§ 43-322 [26: 45]. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.**

The commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem necessary. The commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in chapters 1-10 of this title, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23.)

#### CROSS REFERENCE

Criminal penalties for destruction of apparatus belonging to commission, § 43-909.

**§ 43-323 [26: 46]. Schedule of rates to be filed—Existing rates to remain in force until changed.**

Every public utility shall file with the commission, within a time to be fixed by the commission, sched-

ules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the commission. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24.)

#### COMPILER'S NOTE

This section is largely temporary and executed.

#### CROSS REFERENCE

Changing existing rates, § 43-401.

#### NOTES TO DECISIONS

#### JURISDICTION OF COMMISSION

Limitations upon the commission forbid any attempt at regulation by it of the manner or price at which gas shall be delivered by a Maryland company to its consumers. *Galloway v. Bell* (56 App. D. C. 172, 11 Fed. (2d) 558).

**§ 43-324 [26: 47]. Rules and regulations affecting rates to be filed.**

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25.)

#### CROSS REFERENCES

Rate making, § 43-401.

See compiler's note to § 43-323.

**§ 43-325 [26: 48]. Copy of rate schedule to be available for public inspection.**

A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26.)

**§ 43-326 [26: 49]. Schedule of joint rates to be filed.**

Where a schedule of joint rates or charges is, or may be, in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in section 43-325. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27.)

**§ 43-327 [26: 50]. Change in schedule—Notice.**

No change shall be made in any schedule, including schedules of joint rates, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect: *Provided*, That the commission, upon application of any public



utility, may prescribe a less time within which a reduction may be made. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28.)

## CROSS REFERENCES

Changes to conform to orders of commission, § 43-701.  
Rate making, § 43-401.

## § 43-328 [26: 51]. New schedules to be filed.

Copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29.)

## CROSS REFERENCE

Rate making, § 43-401.

## § 43-329 [26: 52]. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30.)

## CROSS REFERENCES

Criminal penalties, §§ 43-902 to 43-904.  
Other provisions concerning discriminatory rates, § 43-301.  
Rate making, § 43-401.

## § 43-330 [26: 53]. Commission may prescribe changes in form of schedule.

The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31.)

## CROSS REFERENCE

Rate making, § 43-401.

## Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

## Sec.

- 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.
- 43-402. Commission may adopt rules and regulations.
- 43-403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.
- 43-404. Inspection of books and examination of officers of utilities.
- 43-405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of district attorney and corporation counsel.
- 43-406. Appointment of investigating agents—Powers.
- 43-407. Utilities to furnish information required by commission—Maps, books, reports to be delivered to commission on request.
- 43-408. Commission may investigate unjust discriminatory rates—No order to be entered without formal hearing.
- 43-409. Commission to notify utility of complaints.

## Sec.

- 43-410. Notice as to hearings—Compulsory attendance of witnesses.
- 43-411. Reasonable rates may be ordered—Notice to be given utility affected thereby.
- 43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.
- 43-413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.
- 43-414. Summary investigation.
- 43-415. Hearings after summary investigation.
- 43-416. Notice of hearing—Hearing to be conducted as though complaint had been filed.
- 43-417. Utility may make complaint.
- 43-418. Commissioners and agents may administer oaths, issue subpoenas, proceeding to punish for contempt.
- 43-419. Witness fees.
- 43-420. Testimony may be taken by deposition.
- 43-421. Record of proceedings to be kept—Testimony to be taken stenographically.
- 43-422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.

## § 43-401 [26: 120]. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

First, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913; second, every public utility in the District of Columbia shall, within thirty days after March 4, 1913, file in the office of the commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this section may commence a proceeding against it in the District Court of the United States for the District of Columbia in the manner as is in chapters 1-10 of this title provided, which action shall be tried and determined in the same manner as is in chapters 1-10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94.)

## COMPILER'S NOTE

The second clause is clearly temporary.

## CROSS REFERENCES

Accounts required; form and requisites, audits, expenses of audits, §§ 43-309 to 43-319.  
Alteration, revocation, or amendment of orders, § 43-702 and notes.  
Changing rates, § 43-411.



Complaint by utility company for change of rate or service, § 43-417.

Constitutionality of act, § 43-1003.

Criminal penalties for discriminatory rates; refusal to give information, testimony, records, or accounts; failure to obey laws, rules, orders, or regulations, §§ 43-902 to 43-908.

Discriminatory rates forbidden, § 43-301 and notes.

Enforcement of orders, appeal or review, rights and duties pending appeal, § 43-701 et seq.

Filing schedules of rates and charges; rates and charges effective when act took effect, change thereof, §§ 43-323 to 43-330.

Investigation of unreasonable or discriminatory rates, § 43-408.

Itemized accounts and reports required of utility companies, § 43-318.

Liberal construction of act, § 43-1003.

Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, § 43-911.

Rates for electric power companies, § 43-1107.

Rates for gas companies, § 43-1207.

Saving clause for laws, regulations, or orders and pending proceedings, §§ 43-1005, 43-1006.

Sliding scale of rates and dividends, § 43-317.

Street railroads, §§ 44-207, 44-212 to 44-214.

Summary investigation of rates, § 43-414.

Valuation of public utilities, §§ 43-305 to 43-308.

§ 43-402 [26: 54]. Commission may adopt rules and regulations.

The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32.)

#### CROSS REFERENCE

Rules and regulations generally, § 43-202 and notes.

§ 43-403 [26: 55]. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

The commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33.)

#### CROSS REFERENCE

Utility companies required to keep and furnish information, accounts, books, and records, §§ 43-309 to 43-319.

§ 43-404 [26: 56]. Inspection of books and examination of officers of utilities.

The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34.)

#### CROSS REFERENCE

Similar provisions, § 43-314 et seq.

§ 43-405 [26: 57]. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of district attorney and corporation counsel.

The commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the District Court of the United States for the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any district attorney of the United States, the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of chapters 1-10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said district attorney, corporation counsel, or any counsel of the commission, upon request of said commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35.)

#### CROSS REFERENCES

Commissioners and agents may issue subpoenas, § 43-418.

Criminal penalties, § 43-905.

Depositions, § 43-420.

Records and accounts required to be kept by utility companies, §§ 43-309 to 43-319.

§ 43-406 [26: 58]. Appointment of investigating agents—Powers.

For the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in chapters 1-10 of this title to the commission and shall have power to administer oaths and take depositions. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing.



The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36.)

## CROSS REFERENCES

Commissioners and agents may issue subpoenas, § 43-418.

Records, see note to § 43-105.

§ 43-407 [26: 59]. Utilities to furnish information required by commission—Maps, books, reports to be delivered to commission on request.

Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of chapters 1-10 of this title, and shall make specific answers to all specific questions submitted by the commission. Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37.)

## CROSS REFERENCE

Records, see notes to § 43-405.

§ 43-408 [26: 60]. Commission may investigate unjust, discriminatory rates—No order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a

formal hearing. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38.)

## CROSS REFERENCE

Rate making generally, § 43-401 and notes.

## NOTES TO DECISIONS

## LEGISLATIVE INTENT

It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Public Utilities Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. *Hollis v. Kutz* (49 App. D. C. 301, 265 Fed. 451).

§ 43-409 [26: 61]. Commission to notify utility of complaints.

The commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39.)

§ 43-410 [26: 62]. Notice as to hearings—Compulsory attendance of witnesses.

The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40.)

§ 43-411 [26: 63]. Reasonable rates may be ordered—Notice to be given utility affected thereby.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of chapters 1-10 of this title, the commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it is to be found that reasonable service is not supplied, the commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made: *Provided*, That no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the



public utility affected thereby, as provided in section 43-410. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41.)

#### CROSS REFERENCE

Rate making generally, § 43-401 and notes.

#### NOTES TO DECISIONS

##### CONSTITUTIONALITY

The constitutional rights of private consumers of gas are not invaded by rates established by the Public Utilities Commission at a higher rate than is charged to the Government. *Hollis v. Kutz* (255 U. S. 452, 65 L. Ed. 727, 41 Sup. Ct. 371).

§43-412 [26: 65]. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

The expenses of any investigation, valuation, revaluation, or proceeding of any nature by the Public Utilities Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Public Utilities Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Utilities Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Utilities Commission. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the commission in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3.)

#### COMPILER'S NOTE

Section 43-711 provides as follows: "If any provisions of §§ 43-412, 43-704 to 43-711 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby."

#### AMENDMENTS

The act of Mar. 3, 1927, 44 Stat. 1351, ch. 304, added paragraph 42a.

The act of Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3, struck out both paragraphs 42 and 42a and inserted in lieu thereof a new paragraph 42, reading as above.

The 1935 amendment added the following: "and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission."

#### CROSS REFERENCES

Investigation and valuations, § 43-305 et seq.

Rate making generally, § 43-401 and notes.

#### NOTES TO DECISIONS

##### FRANCHISE TAX

The application of the rule of assessment provided for in this section does not impose an unconstitutional burden upon the utilities company.

##### PAYMENT OF EXPENSES

Later statute requiring utility to bear expenses of investigation or revaluation by Public Utilities Commission prevails over a previous statute which requires a utility to pay expenses only where utility is at fault. *Washington R. & Elec. Co. v. District of Columbia* (64 App. D. C. 243, 77 Fed. (2d) 366).

§ 43-413 [26: 66]. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.

The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43.)

§ 43-414 [26: 67]. Summary investigation.

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44.)

#### CROSS REFERENCE

Rate making generally, § 43-401 and notes.

§ 43-415 [26: 68]. Hearings after summary investigation.

If after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45.)

§ 43-416 [26: 69]. Notice of hearing—Hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other in-



interested persons as the commission shall deem necessary, as provided in section 43-410, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46.)

**§ 43-417 [26: 70]. Utility may make complaint.**

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the commissioner or upon reasonable complaint as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47.)

**CROSS REFERENCE**

Rate making generally, § 43-401 and notes.

**§ 43-418 [26: 71]. Commissioners and agents may administer oaths, issue subpoenas—Proceeding to punish for contempt.**

Each of the commissioners and every agent provided for in section 43-406, for the purposes mentioned in chapters 1-10 of this title, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the District Court of the United States for the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48.)

**§ 43-419 [26: 72]. Witness fees.**

Each witness who shall appear before the commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the District Court of the United States for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpoenaed at the instance of parties other than the commission shall be entitled to compensation for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49.)

**§ 43-420 [26: 73]. Testimony may be taken by deposition.**

The commission or any party may, in any investigation, cause the depositions of witnesses residing

within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in District Courts. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50.)

**§ 43-421 [26: 74]. Record of proceedings to be kept—Testimony to be taken stenographically.**

A full and complete record shall be kept of all proceedings had before the commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the commission. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51.)

**§ 43-422 [26: 76]. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.**

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53.)

**Chapter 5.—SALE AND MERGER OF UTILITIES**

**Sec.**

43-501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.

43-502. Antimerger law.

43-503. Merger of street railways permitted.

**§ 43-501 [26: 77]. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.**

No franchise nor any right to or under any franchise to own or operate any public utility as defined in chapters 1-10 of this title or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every con-



tract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54.)

#### CROSS REFERENCES

Constitutionality of act, § 43-1003.  
Criminal penalties, §§ 43-906 to 43-908.  
Liberal construction of act, § 43-1003.  
Other provisions concerning reorganization or consolidation of companies, issuance of stock, § 43-805.  
Saving clauses, §§ 43-1005, 43-1006.

#### NOTES TO DECISIONS

##### PURCHASE OF OTHER COMPANIES

Under authority of this paragraph, the Washington Gas Light Company was granted permission by the Public Utilities Commission to purchase the stocks and bonds of various other gas-light companies. *Washington Gas Light Co. v. Dann* (63 App. D. C. 142, 70 Fed. (2d) 746).

§ 43-502 [26: 78]. Antimerger law.

It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The District Court of the United States for the District of Columbia, on application of the District of Columbia by its commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: *Provided*, That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least

twenty per centum of the capital stock of the local corporation.

The inhibitions and restrictions contained in this section are hereby removed, so far and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations referred to in section 43-503: *Provided*, Congress reserves the right to alter, amend, or repeal this paragraph of this section.

The word "foreign" when used in this section shall be construed to mean foreign to the District of Columbia, and the word "local" when used in this section shall be construed to mean local in the District of Columbia.

Each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof. (Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 11; Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 2, 3.)

#### AMENDMENT

Act of 1925 provides that the inhibitions and restrictions in this section are thereby removed so far, and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations approved by Public Utilities Commission. Congress also reserves the right to alter, amend, or repeal this act or any provision thereof.

#### COMPILER'S NOTE

The word "section" in the second sentence of the first paragraph is undoubtedly a misprint for "Act."

#### CROSS REFERENCE

Reorganization or consolidation, issuance of stock, § 43-805.

§ 43-503 [26: 79]. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by one company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions as may be agreed upon by a vote of a majority in amount of the stock of the respective corporations and as may be approved by the Public Utilities Commission of the District of Columbia: *Provided*, That no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of chapter 2 of title 29 of this Code, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Utilities Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof. (Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3.)

#### CROSS REFERENCES

Competitive carriers must obtain certificate of convenience and necessity, § 44-201.

Reorganization or consolidation, issuance of stock, § 43-805.



## STREETCAR MERGER

Paragraph "Second" of the preamble of the joint resolution to authorize merger of street-railway corporations operating in the District of Columbia, approved January 14, 1933, was amended to read as follows by act February 16, 1933, 47 Stat. 819, ch. 94, § 1:

"Second. The New Company shall be incorporated under the provisions of subchapter IV of chapter XVIII of the Code of Law of the District of Columbia and pursuant to an act of Congress entitled 'An Act to permit the merger of street-railway corporations operating in the District of Columbia, and for other purposes', approved March 4, 1925, with power subject to the approval of the Public Utilities Commission to acquire, construct, own, and operate directly transit properties within the District of Columbia and either directly or through subsidiaries in adjacent States, including the power to acquire, own, and operate the properties to be conveyed to the New Company in accordance with this agreement, and to acquire and own the stock and/or bonds of said companies and of any other company or companies engaged in the transportation of passengers by street railway or bus in the District of Columbia and adjacent States with the power to mortgage its property rights, and franchises, and to conduct such other activities as may be useful or necessary in connection with or incident to the foregoing purposes, including the power to buy, sell, hold, own, and convey real estate within and without the District of Columbia. Said New Company when incorporated shall become and remain subject in all respects to regulation by the Public Utilities Commission of the District of Columbia or its successors to the extent of the jurisdiction now or hereafter vested in it or them by law over corporations engaged in the transportation of passengers by street railway or bus within the District of Columbia: *Provided*, That before they are recorded, the articles of incorporation and/or any amendments thereto shall be approved by the Public Utilities Commission."

"Sec. 2. That Congress hereby expressly reserves the right to alter, amend, or repeal this resolution."

## CROSS REFERENCE

Competing lines, restrictions, § 44-201.

## NOTES TO DECISIONS

## REMOVAL OF TRACKS

Commissioners of District of Columbia had the right to require the removal of tracks from streets where the Public Utilities Commission has lawfully ordered the abandonment of street railway service. *Capital Transit Co. v. Hazen* (68 App. D. C. 91, 93 Fed. (2d) 250).

## Chapter 6.—GAS AND ELECTRIC CORPORATIONS

## Sec.

- 43-601. Public Utilities Commission—General powers.
- 43-602. Approval of construction of gas or electric plant.
- 43-603. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.
- 43-604. Excessive charges to defeat suit to collect for gas or electricity furnished.
- 43-605. Appointment and removal of inspectors and assistant inspectors of gas and meters.
- 43-606. Inspector of gas and meters to transfer books to commission.

## § 43-601 [26: 80]. Public Utilities Commission—General powers.

The commission shall, within its jurisdiction—

Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining

underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 for each offense. (Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55.)

## CROSS REFERENCES

Constitutionality of act, § 43-1003.  
Criminal penalties generally, §§ 43-906, 43-907.



Disposition of fines and forfeitures, § 43-912.  
 Fees for testing meters or measuring devices, § 43-321.  
 General provisions for testing meters and quality of product, rules and regulations, § 43-320.  
 Investigation of personal injuries or deaths occurring from operation of utility, § 43-1001.  
 Liberal construction of act, § 43-1003.  
 Penalties provided by this section do not bar prosecution under other laws, § 43-913.  
 Saving clauses, §§ 43-1005, 43-1006.  
 Special provisions concerning electric and gas companies, §§ 43-1101 to 43-1109, 43-1201 to 43-1207.

**§ 43-602 [26: 81]. Approval of construction of gas or electric plant.**

No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56.)

**CROSS REFERENCE**

See notes to § 43-601.

**§ 43-603 [26: 82]. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.**

The commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the commission, to inspect, examine, prove, and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat, or power furnished by any person or corporation to or for the use of any person or corporation, and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the commission.

No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected, proved, and sealed by an inspector of the commission.

The commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the commission or any meter not approved by an inspector of the commission.

Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than two per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38.)

**AMENDMENT**

The 1939 amendment deleted the words "four per centum, if an electric meter, or more than" in the fifth paragraph following the word "than" the first time it appears; and deleted the words "if a gas meter" following the words "two per centum" where they appear in said paragraph.

**CROSS REFERENCES**

Laboratory for inspector of gas and meters, §§ 43-1201 to 43-1204.

Rules and regulations generally, § 43-202.

See notes to § 43-601.

**§ 43-604 [26: 83]. Excessive charges to defeat suit to collect for gas or electricity furnished.**

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity that a price has been demanded in excess of that fixed by the commission or by statute no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58.)

**CROSS REFERENCE**

Cutting off gas for failure to pay charges, § 43-1205.

**§ 43-605 [26: 84]. Appointment and removal of inspectors and assistant inspectors of gas and meters.**

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Utilities Commission to be designated and known as inspector of gas and meters, whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office. The appointment and power to remove the inspector of gas and meters and assistant inspectors of gas and meters from office is hereby vested in the commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and per-



formed under the supervision and control of the commission. (June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59.)

#### AMENDMENT

The 1913 amendment added the last two sentences.

#### CROSS REFERENCE

See notes to § 43-601.

§ 43-606 [26: 85]. Inspector of gas and meters to transfer books to commission.

The inspector of gas and meters provided for by law prior to March 4, 1913, shall transfer and deliver to the commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60.)

#### COMPILER'S NOTE

This section is largely, if not altogether, temporary and executed.

### Chapter 7.—ORDERS AND COURT PROCEEDINGS

#### Sec.

- 43-701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.
- 43-702. Commission may rescind, alter, or amend orders fixing rates.
- 43-703. Rates to be in force and to be prima facie reasonable.
- 43-704. Application to District Court for instructions—Application for reconsideration.
- 43-705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.
- 43-706. Appeal limited to questions of law.
- 43-707. Orders to remain in force pending appeal—Suspension of order.
- 43-708. Certification of question to United States Court of Appeals.
- 43-709. Authority of Commission to rescind its order after appeal is filed.
- 43-710. Method of review exclusive.
- 43-711. Saving clause.
- 43-712. Production of incriminating evidence compellable, immunity from prosecution.
- 43-713. Commission to furnish certified copies of orders.

§ 43-701 [26: 86]. Schedules to conform to orders of commission—Changes in schedules to be first approved by Commission.

All public utilities to which an order of the commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the commission shall prescribe. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61.)

#### CROSS REFERENCES

Certified copies, effect as evidence, § 43-713.  
 Constitutionality of act, § 43-1003.  
 General penal provisions, §§ 43-906 to 43-908.  
 Liberal construction of act, § 43-1003.  
 Other provisions concerning changes of rates and schedules, §§ 43-323 to 43-328.  
 Rates and rate making, § 43-401 et seq.  
 Saving clauses, §§ 43-1005, 43-1006.

§ 43-702 [26: 87]. Commission may rescind, alter, or amend orders fixing rates.

The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in section 43-410, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62.)

#### CROSS REFERENCES

Pending appeal, § 43-709.  
 Power of Commission to alter unreasonable or discriminatory rates, § 43-911.

§ 43-703 [26: 88]. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63.)

§ 43-704 [26: 89]. Application to District Court for instructions—Application for reconsideration.

If at any time the commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of chapters 1-10 of this title, they are authorized and empowered to institute a proceeding in equity in the District Court of the United States for the District of Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

Any public utility or any other person or corporation affected by any final order or decision of the commission may, within thirty days after the publication thereof, file with the commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The commission, within thirty days after the filing of such application, shall either grant or deny it. Failure by the commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the commission, after giving notice thereof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Com-



mission upon the application: *Provided*, That upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1.)

#### AMENDMENT

The act of 1935 has completely reworded the provisions of this section for a reconsideration of a final order of the Commission, and omitted reference to precedence over other civil causes, and to liability for costs.

#### CROSS REFERENCE

Valuation, § 43-305 et seq.

#### NOTES TO DECISIONS

##### AGREEMENT NOT TO RESELL PRODUCT

Utility may require agreement from user not to remeter and resell current. *Lewis v. Potomac Elec. Power Co.* (62 App. D. C. 63, 64 Fed. (2d) 701).

##### COMPLAINT AND HEARING

A formal complaint and hearing before the Commission are not necessary conditions precedent to a suit in equity. *Hollis v. Kutz* (255 U. S. 452, 65 L. Ed. 727, 41 Sup. Ct. 371, affg. 49 App. D. C. 301, 265 Fed. 451).

##### COSTS ON APPEAL

Appeal taken by the Public Utilities Commission from the order of the District Court of the United States for the District in a rate case was an administrative proceeding and the costs of printing the record and the brief of the Commission upon the appeal were expenses of the proceeding, although the appeal wherein these expenses were incurred was dismissed as a result of changed conditions. *Washington R. & Elec. Co. v. District of Columbia* (64 App. D. C. 243, 77 Fed. (2d) 366).

##### LEGISLATIVE INTENT

Congress intended that the court shall revise the legislative discretion of the Commission by considering the evidence and full record of the case and entering the order it deems the Commission ought to have made. *Keller v. Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

§ 43-705 [26: 89a]. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

The District Court of the United States for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the District Court of the United States for the District of Columbia a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly

certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: *Provided*, That the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said court, and the District Court of the United States for the District of Columbia shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any justice or justices thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said Commission, may appeal from the order or decree of said court to the United States Court of Appeals for the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2.)

#### AMENDMENT

This section was substituted by the 1935 act for paragraph 65 of § 8 of the 1913 act, which provided as follows:



"That every proceeding, action, or suit to set aside, vacate, or amend any determination or order of the Commission, or to enjoin the enforcement thereof, or to prevent in any way any such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within one hundred and twenty [120] days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding, or suit, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such one hundred and twenty days."

#### NOTES TO DECISIONS

##### DECISION UNDER PRIOR LAW

Though the burden of proof was upon the party contesting a finding of the Commission, the court must exercise its own judgment where challenged for a mistake of law, failure of evidence or contrary to weight of evidence. *Potomac Elec. Power Co. v. Public Utilities Comm.* (51 App. D. C. 77, 276 Fed. 327).

##### JURISDICTION OF COURTS

Congress may vest in the courts of the District power to review the discretion of a Public Utilities Commission fixing rates for a public service corporation, and enter the order which they deem the commission should have made. *Keller v. Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

##### VALIDITY

A section of the statute providing for review is not rendered wholly void by the inclusion in it of an invalid provision for ultimate appeal to the Supreme Court. *Keller v. Potomac Elec. Power Co.* (261 U. S. 428, 67 L. Ed. 731, 43 Sup. Ct. 445).

#### § 43-706 [26: 89b]. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2.)

##### AMENDMENT

The 1935 amendment inserted the above section in lieu of paragraph 66 of § 8 of the 1913 act, which provided as follows: "That no injunction shall issue suspending or staying any order of the commission, except upon application to the Supreme Court of the District of Columbia or a judge thereof, and only upon notice to the commission and after hearing had."

#### § 43-707 [26: 89c]. Orders to remain in force pending appeal—Suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in section 43-704 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District Court of the United States for the District of Columbia: *Provided*, That if in any petition made to the said court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the court shall set a time and place for hearing upon the said allegation after not less than three days' notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said court may then, upon a clear showing of the

irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than sixty days without further order after notice or hearing by the court. In the event of the issuance of an order suspending the operation of any order of the Commission, the court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

##### AMENDMENT

The 1935 amendment substituted the above section for paragraph 67 of § 8 of the 1913 act, which provided the procedure formerly followed upon introduction of new evidence.

#### § 43-708 [26: 89d]. Certification of question to United States Court of Appeals.

The District Court of the United States for the District of Columbia, or any justice thereof before whom an appeal from an order of the Commission is pending, may certify to the United States Court of Appeals for the District of Columbia any questions or propositions of law concerning which instructions are desired for the proper disposition of the appeal; and thereupon the Court of Appeals may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 68; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

##### AMENDMENT

The 1913 act substituted the above section for paragraph 68 of § 8 of the 1913 act, which provided procedure formerly followed when the Commission rescinded, altered, modified, or amended its order.

#### § 43-709 [26: 89e]. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the court shall proceed thereon as though the late order had been made by the Commission in the first instance. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

##### AMENDMENT

The 1913 act substituted the above section for paragraph 69 of § 8 of the 1913 act, which fixed the burden of proof on the party adverse to the Commission.

##### CROSS REFERENCE

Amendment or revocation of orders, § 43-702 and notes.

#### § 43-710 [26: 89f]. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by paragraphs 43-704 to 43-709, herein, shall be exclusive. (Mar. 4, 1913, ch.



150, § 8, par. 69a, as added Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

§ 43-711 [26: 89g]. Saving clause.

If any provisions of sections 43-412, 43-704 to 43-711 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 27, 1935, 49 Stat. 885, ch. 742, § 4.)

#### COMPILER'S NOTE

Section 5 of the act of 1935 provided as follows:

"No proceeding or litigation, except a proceeding involving solely the valuation of the property of any public utility, pending in any court in the District of Columbia on August 27, 1935, shall be affected by any of the provisions hereof."

#### CROSS REFERENCE

Saving clauses generally, §§ 40-1005, 40-1006.

§ 43-712 [26: 95]. Production of incriminating evidence compellable, immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 1-10 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided*, That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further*, That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70.)

#### CROSS REFERENCE

Criminal penalties for failure to testify or to produce documentary evidence, §§ 43-905.

§ 43-713 [26: 96]. Commission to furnish certified copies of orders.

Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71.)

### Chapter 8.—ISSUANCE OF SECURITIES

#### Sec.

- 43-801. Creation of liens on property of utilities—Supervision by Commission.
- 43-802. Certificate of Commission showing authority to issue stocks to be obtained.
- 43-803. Stocks not to be issued until certificate is recorded.
- 43-804. Stock dividends prohibited.
- 43-805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.
- 43-806. Application of proceeds of stock.
- 43-807. Stock to be void unless law is complied with.
- 43-808. Penalty for improper issuance or application of stock or proceeds.

§ 43-801 [26: 97]. Creation of liens on property of utilities—Supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Utilities Commission of the District of Columbia, and such power shall be exercised according to the provisions of chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72.)

#### CROSS REFERENCES

Constitutionality of act, § 43-1003.  
 Liberal construction of act, § 43-1003.  
 Saving clauses, §§ 43-1005, 43-1006.

§ 43-802 [26: 98]. Certificate of Commission showing authority to issue stocks to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73.)

#### CROSS REFERENCE

Criminal penalties, § 43-901.

§ 43-803 [26: 99]. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in this section provided for. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74.)

#### CROSS REFERENCE

Criminal penalties, § 43-901.

§ 43-804 [26: 100]. Stock dividends prohibited.

No public utility shall declare any stock, bond, or scrip dividend or divide the proceeds of the sale of any stock, bond, or scrip among its stockholders. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 75.)

§ 43-805 [26: 101]. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness than outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms



upon which said consolidation shall be made. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76.)

#### CROSS REFERENCES

Merger of street railways, § 43-503.

Other similar provisions, §§ 43-501, 43-502.

§ 43-806 [26: 102]. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77.)

§ 43-807 [26: 103]. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of chapters 1-10 of this title shall be void. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78.)

§ 43-808 [26: 104]. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of chapters 1-10 of this title, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the commission, shall forfeit and pay into the Treasury of the United States, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia, not less than \$1,000 nor more than \$10,000 for each offense. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

#### AMENDMENT

Act of 1921 amended act of 1913 by adding the words beginning with "to the credit" and ending with "revenues of the District of Columbia."

#### CROSS REFERENCES

Disposition of fines, forfeitures, and penalties, § 43-912.

Federal Government now makes a lump-sum appropriation for the District, § 47-134.

Other criminal penalties, § 43-901.

Penalties and forfeitures do not bar prosecutions under other laws, § 43-913.

### Chapter 9.—PENAL PROVISIONS

#### Sec.

43-901. Penalty for false statements in securing approval of issuance of stock.

43-902. Penalty for demanding or receiving greater or less than established rates.

43-903. Less than rates not to be charged in consideration of consumer furnishing equipment—Exceptions.

43-904. Rebates prohibited—Penalty.

43-905. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.

43-906. Penalty for failure or refusal to perform duty enjoined or to obey order of commission.

43-907. Prosecution and penalty for violation of rules.

43-908. Construction of sections 43-906 and 43-907.

#### Sec.

43-909. Penalty for destruction of apparatus or appliance of commission.

43-910. Each day's default to constitute separate and distinct offense.

43-911. Commission may regulate unreasonable and discriminatory rates and fix new rates.

43-912. Fines, penalties, and forfeitures to be paid into Treasury.

43-913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

§ 43-901 [26: 105]. Penalty for false statements in securing approval of issuance of stock.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of chapters 1-10 of this title, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 or by imprisonment for a term of not less than one year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80.)

§ 43-902 [26: 106]. Penalty for demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipe line company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than \$100 nor more than \$1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$100 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81.)

#### CROSS REFERENCE

Illegal rates by electric power companies, § 43-1107.



## NOTES TO DECISIONS

## CASH DEPOSIT

Utility may require cash deposit from customers unable to establish financial responsibility. *Riegel v. Public Utilities Comm.* (60 App. D. C. 111, 48 Fed. (2d) 1023).

§ 43-903 [26: 107]. Less than rates not to be charged in consideration of consumer furnishing equipment—Exceptions.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto: *Provided*, That nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the commission, meters, and appliances for measurements of any product or service. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82.)

§ 43-904 [26: 108]. Rebates prohibited—Penalty.

It shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in this section, or whereby any service or advantage is received other than is in this section specified. Any person, firm, or corporation violating the provisions of this paragraph shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83.)

§ 43-905 [26: 109]. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by chapters 1-10 of this title, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account,

record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the commission under chapters 1-10 of this title, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense, and a penalty of not less than \$500 nor more than \$2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent, or employee acted in obedience to the direction, construction, or request of such public utility or any general officer thereof. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 84.)

§ 43-906 [26: 110]. Penalty for failure or refusal to perform duty enjoined or to obey order of commission.

If any public utility shall violate any provision of chapters 1-10 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of \$200 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85.)

## CROSS REFERENCES

Each day's default separate offense, § 43-910.

Investigation of neglect or violations of laws, rules, or regulations, § 43-1002.

§ 43-907 [26: 110a]. Prosecution and penalty for violation of rules.

Prosecution for violation of any rule, order, or regulation made, adopted, or approved by the Public Utilities Commission under authority of chapters 1-10 of this title, or section 40-603, or sections 47-2401 to 47-2450, or by the Joint Board under authority of section 40-603 or sections 47-2301 to 47-2350, shall be on information in the Police Court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. Any person, corporation, or public utility violating any such rule, order, or regulation shall, upon conviction, be fined not more than \$200: *Provided*, That the provisions of sections 43-907, 43-908 shall not be construed to apply to rules, orders, or regulations adopted or promulgated by the Commissioners of the District of Columbia which are not specifically required to be referred to the Joint Board or subject to the approval of such board: *Provided further*, That with respect to orders, rules, or regu-



lations made or adopted by the Public Utilities Commission under authority of chapters 1-10 of this title, this section shall be construed to apply only to such orders, rules, or regulations as are subject to the penalties specifically provided in section 43-906. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1.)

## CROSS REFERENCES

Criminal penalty for recording instrument by one who has no color of title, § 22-1302.

Rules and regulations generally, § 43-202 and notes.

Violations of provisions concerning street cars, § 44-203.

§ 43-908 [26: 110b]. Construction of sections 43-906 and 43-907.

The provisions of sections 43-906 and 43-907, so far as they relate to the orders, rules, and regulations of the Public Utilities Commission, shall be construed as prescribing alternative methods of enforcement of the orders, rules, or regulations of the commission, and any order, rule, or regulation adopted by the Public Utilities Commission which is required to be referred to or is subject to the approval of the joint board may be enforced either as provided by sections 43-906 or 43-907. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2.)

§ 43-909 [26: 111]. Penalty for destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding \$100 or imprisonment for a period not exceeding thirty days, or both. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86.)

§ 43-910 [26: 112]. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of chapters 1-10 of this title, as the case may be. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87.)

§ 43-911 [26: 113]. Commission may regulate unreasonable and discriminatory rates and fix new rates.

Whenever, after hearing and investigation as provided in chapters 1-10 of this title, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88.)

## CROSS REFERENCES

General provision for alteration, revocation, or amendment of orders, § 43-702.

Investigation and determination of rates, §§ 43-408 to 43-417.

§ 43-912 [26: 129]. Fines, penalties, and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

## AMENDMENT

This section is a composite of credits cited in the history line.

## CROSS REFERENCE

The Federal Government now makes a lump-sum appropriation for the District, § 47-134.

§ 43-913 [26: 119]. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

Chapters 1-10 of this title shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93.)

## Chapter 10.—GENERAL PROVISIONS

## Sec.

- 43-1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.
- 43-1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.
- 43-1003. Chapters to be liberally construed—Saving clause.
- 43-1004. Number of directors of public utilities.
- 43-1005. Existing laws to remain in force.
- 43-1006. Action pending March 4, 1913, unaffected by chapters 1-10 of this title.
- 43-1007. Right of repeal reserved.

§ 43-1001 [26: 114]. Utilities to report to Commission accidents upon their premises—Commission may investigate.

Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89.)

§ 43-1002 [26: 115]. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.

The commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing busi-



ness therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of chapters 1-10 of this title as well as all other laws relating to public utilities. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90.)

## CROSS REFERENCE

General provisions for enforcement of laws, rules and regulations, §§ 43-906 to 43-908.

§ 43-1003 [26: 118]. Chapters to be liberally construed—Saving clause.

The provisions of chapters 1-10 of this title shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of chapters 1-10 of this title the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in chapters 1-10 of this title conferred on said commission. The commission hereby created shall have, in addition to the powers in chapters 1-10 of this title specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of chapters 1-10 of this title shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of chapters 1-10 of this title, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92.)

§ 43-1004 [26: 131]. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than fifteen nor less than seven members, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100.)

§ 43-1005 [26: 132]. Existing laws to remain in force.

Except as modified or changed by chapters 1-10 of this title and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law: *Provided*, That all charters, statutes, acts, and parts of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of chapters 1-10 of this title, and only so far as inconsistent and repugnant thereto, are hereby repealed. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101.)

## CROSS REFERENCES

Appeal and review, saving clause, § 43-711 and note.

Other provisions for saving clause for laws, orders, rules and regulations and pending proceedings, §§ 43-203, 43-1006, and notes.

§ 43-1006 [26: 133]. Action pending March 4, 1913, unaffected by chapters 1-10 of this title.

Chapters 1-10 of this title shall not affect actions or proceedings, civil or criminal, or quasi criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102.)

## COMPILER'S NOTE

This section is probably temporary and obsolete.

## CROSS REFERENCE

Saving clauses, see notes to § 43-1005.

§ 43-1007 [26: 134]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103.)

## Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

## Sec.

- 43-1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.
- 43-1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.
- 43-1103. Certain existing conduits and overhead wires legalized.
- 43-1104. Electric-lighting wires west of Rock Creek.
- 43-1105. Electric-lighting wires east of Rock Creek.
- 43-1106. Permits for repair, extension, and enlargement of conduits.
- 43-1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.
- 43-1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.
- 43-1109. Annual reports to Congress.

§ 43-1101 [26: 172]. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

The said commissioners may authorize any electric light company existing June 11, 1896, to construct and use under such regulations as the commissioners may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Commissioners of the District of Columbia may prescribe. (June 11, 1896, 29 Stat. 401, ch. 419.)

## CROSS REFERENCES

Inspection and regulation of production, use and control of electrical power, § 1-719 et seq.

Jurisdiction and control over public ways, § 7-102 and notes.

Permits to lay underground conduits in connection with certain bridges, §§ 7-1230, 7-1232.

Private conduits, § 43-1301 et seq.

Rules and regulations generally, § 1-226 and notes.



§ 43-1102 [26: 173]. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law: *Provided, however*, That the Commissioners of the District of Columbia are hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in sections 43-1101 and 43-1401. (Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2.)

#### AMENDMENT

This section is a composite of credits cited in the history line.

#### CROSS REFERENCE

Similar provisions, § 43-1401.

§ 43-1103 [26: 174]. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits. (July 7, 1898, 30 Stat. 664, ch. 571.)

§ 43-1104 [26: 175]. Electric-lighting wires west of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only. (July 8, 1898, 30 Stat. 753, Joint Res. No. 59.)

§ 43-1105 [26: 176]. Electric-lighting wires east of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized, under conditions and regulations to be prescribed by them, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric-lighting purposes only. (July 1, 1902, 32 Stat. 602, ch. 1352.)

§ 43-1106 [26: 177]. Permits for repair, extension, and enlargement of conduits.

The Commissioners of the District of Columbia are hereby authorized to grant permits for the repair,

enlargement, and extension, under proper regulations, of electric-lighting conduits existing on June 6, 1900, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. (June 6, 1900, 31 Stat. 563, ch. 789.)

§ 43-1107 [26: 194]. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

The Commissioners of the District of Columbia are authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on March 3, 1899, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than one thousand actual candlepower, at a rate not exceeding seventy-two dollars per annum for each arc light. The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed ten cents per kilowatt hour. If consumers other than the Government shall not pay monthly electric bills within ten days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid eleven cents per kilowatt hour for the electric current furnished to said consumer during said month: *And provided further*, The right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of fifty dollars for each and every offense, to be collected as other fines are collected in the District of Columbia. (Mar. 3, 1899, 30 Stat. 1053, ch. 422.)

#### CROSS REFERENCES

Criminal penalties for discriminatory or unreasonable rates, §§ 43-902 to 43-904.

Illegal rates, § 43-301.

Rates and rate making generally, § 43-401 and notes.

See notes to § 43-1101.

§ 43-1108 [26: 195]. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Commissioners of the District of Columbia are hereby authorized, in their discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway



companies' conduits to be upon such terms as may be agreed upon between the said companies. (Apr. 27, 1904, 33 Stat. 376, ch. 1628.)

## CROSS REFERENCE

Joint use of utility facilities, §43-302.

§ 43-1109 [26: 196]. Annual reports to Congress.

Any company, association or corporation engaged in the manufacture and sale of electricity for illuminating or heating or power purposes, or either, in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the first day of February in each year. Said report shall contain a detailed statement of the condition of the business of said company, association or corporation for the year ending December thirty-first next preceding, and such statement shall set forth the actual cost and also present value of the property of such company, association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such company, association, or corporation, the amount and cost of materials used in making electricity, the quantity of electricity manufactured, the quantity of electricity sold, the amount received per annum for each public arc light, the amount received per kilowatt for each public incandescent light, the average price received per annum for each arc light furnished to others than the public, the varying discounts allowed to consumers using arc lights during a part of or the entire night, the average price charged per kilowatt for incandescent lights furnished to others than the public, with the varying discounts, and the price charged per kilowatt hour for power or heat furnished, and the gross revenues from each source, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set aside for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations in the District of Columbia, the names of the stockholders and the amount of stock held in such company, association or corporation by each of them on December thirty-first next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1134, ch. 2510.)

## CROSS REFERENCE

Reports of utility companies, § 47-318.

## Chapter 12.—GAS COMPANIES—SPECIAL ACTS

## Sec.

- 43-1201. Laboratory for testing gas of Washington Gas Light Company.
- 43-1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.
- 43-1203. Officer of company may be present at tests.
- 43-1204. Daily inspections—Reports.

## Sec.

- 43-1205. Removal of gas meters for neglect or refusal to pay amount due.
- 43-1206. Annual reports to Congress.
- 43-1207. Maximum rates for gas—Additional charge for nonpayment of bills.

§ 43-1201 [26: 151]. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Utilities Commission, in the central part of the City of Washington, at a distance as near as may be, of two thousand feet from any gas-works, and furnished with suitable apparatus for the transaction of the business of the inspector and assistant inspectors of gas and meters, for which it is intended, and the laboratory shall be kept open on all business-days between the hours of nine o'clock in the forenoon and four o'clock in the afternoon: *Provided*, That the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873. (June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8.)

## COMPILER'S NOTE

This section and § 43-1202 are partly temporary and executed.

## AMENDMENT

This section is a composite of credits cited in the history line.

## CROSS REFERENCE

Other provisions concerning gas inspector and testing of meters, § 43-603 and notes.

§ 43-1202 [26: 152]. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners, at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the city of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gas



Light Company: *Provided*, That the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company: *Provided further*, That the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the collector of taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Commissioners of the District of Columbia, and not to exceed five hundred dollars per annum for each of the said additional laboratories. (Mar. 3, 1893, 27 Stat. 543, ch. 199.)

## CROSS REFERENCE

See notes to § 43-1201.

§ 43-1203 [26: 153]. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the inspector, be represented by some officer, but such officer shall not interfere in the testing. (June 23, 1874, 18 Stat. 278, ch. 480, § 4, July 1, 1882, 22 Stat. 133, ch. 263, § 1.)

## AMENDMENT

Act of July 1, 1882, amended the act of June 23, 1874, by abolishing the office of "assistant inspector."

§ 43-1204 [26: 154]. Daily inspections—Reports.

Daily inspections, Sundays excepted, shall be made at any time after twelve o'clock noon and before twelve o'clock midnight, in the discretion of the inspector of gas and meters. (June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

## AMENDMENT

Act of 1874 provided for inspections between five and eleven o'clock in the afternoon.

## CROSS REFERENCE

Right of access to make examinations and inspections, § 43-601.

§ 43-1205 [26: 155]. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving forty-eight hours' notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of eight o'clock in the forenoon and two o'clock in the afternoon. It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section. (June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14.)

## CROSS REFERENCE

Defective meter as defense, § 43-604.

§ 43-1206 [26: 156]. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1133, ch. 2510.)

## CROSS REFERENCE

Reports generally, § 43-318.

§ 43-1207 [26: 157]. Maximum rates for gas—Additional charge for nonpayment of bills.

No part of any money appropriated by any Act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of 70 cents per one thousand cubic feet.

The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of 75 cents per one thousand cubic feet of gas so furnished: *Provided*, That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each one thousand cubic feet of gas represented by said bill: *And provided further*, That nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Utilities Commission of the District of Columbia.



The Georgetown Gas Light Company shall not be permitted to charge or collect more than 85 cents per one thousand cubic feet for gas for cooking, illuminating, or other purposes. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6.)

## CROSS REFERENCE

Rates and rate making generally, § 43-401 and notes.

## Chapter 13.—PRIVATE CONDUITS

Sec.

- 43-1301. Conditions under which private conduits may be laid.
- 43-1302. Refusal to remove conduits—Penalty.
- 43-1303. Right of repeal reserved.
- 43-1304. Construction of tunnels and structures in Anacostia River.

§ 43-1301 [19: 121]. Conditions under which private conduits may be laid.

The Commissioners of the District of Columbia are hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

The conduits and pipes shall be located as directed by said Commissioners and be laid under their inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

The permittee shall not rent the conduit or pipe or any portion thereof. (May 26, 1900, 31 Stat. 217, ch. 587, § 1.)

## CROSS REFERENCE

Other provisions concerning electrical conduits, § 43-1101 et seq.

§ 43-1302 [19: 122]. Refusal to remove conduits—Penalty.

On violation of any of the provisions or restrictions of section 43-1301 the said Commissioners shall require the permittee, after thirty days' notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within sixty days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of ten dollars for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the police court of said District, in the name of said District, as other fines and penalties are now recovered in said court. (May 26, 1900, 31 Stat. 218, ch. 587, § 2.)

§ 43-1303 [19: 123]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43-1301 and 43-1302. (May 26, 1900, 31 Stat. 218, ch. 587, § 3.)

§ 43-1304 [19: 130f]. Construction of tunnels and structures in Anacostia River.

The Secretary of War is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the Anacostia River in so far as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above-mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest; and said Director of National Park Service is authorized to permit the construction and operation of any pipe lines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the Government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 319, ch. 265, § 4.)

## COMPILER'S NOTES

Director of Public Buildings and Public Parks of the National Capital was changed to Director of National Parks, Buildings and Reservations by Ex. Or. No. 6166, June 10, 1933. This in turn was changed to Director of National Park Service by act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

The following laws are not of general application and are deemed to be executed, but are set out as notes so as to make them available. They appeared in the Code of 1929 and Supplement. Sections 124 to 130V were in title 19, of the 1929 code. Sections 107, 107a, 107b and 107c were in title 20 of that code. They are set out as they appeared in that code, retaining the section number and wording.

§ 124. *Certain conduits across E and F Streets, southwest, authorized.*—The Commissioners of the District of Columbia are authorized to issue a permit to the Terminal Refrigerating and Warehousing Corporation, its successors or assigns, for the laying of an underground conduit and pipes from square 328 across and under E Street southwest, to and into square 327; and traversing all public alleys in said square, and from square 328 across and under F Street southwest, to and into square 329, for refrigerating purposes, under the following conditions, namely: The conduit and pipes therein laid shall be laid in a straight direction at right angles to the building lines of said streets; they shall be located as directed by the Commissioners of the District of Columbia and be laid under their inspection and the cost of such inspection and the replacing of pavements, curbs, and sidewalks disturbed shall be paid by the parties to whom the permit shall be granted: *Provided*, That such conduit and pipes shall be used for no purpose other than refrigeration. Congress reserves the right to amend, alter, or repeal this section. (Feb. 28, 1931, 46 Stat. 1459, ch. 344.)

§ 125. *Pipe lines for use of Griffith-Consumers Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to grant permission to the Griffith-Consumers Company, a corporation organized and existing under the laws of the State of Delaware, the owner of square 661 in the city of Washington in the District of Columbia, said square being bounded on the north by R Street, on the south by S Street, on the east by Half Street, and on the west by First Street, its successors and assigns, to lay down, construct,



maintain, and use not more than ten pipe lines for the carriage of petroleum and petroleum products from a point or points within said square 661, in and through R Street, due east to Half Street, east, and thence north on Half Street, east, to a point opposite lots 12 or 13 in square east of square 708 (through which said lots the said Griffith-Consumers Company on April 14, 1932, had an easement to run said pipe lines), thence through said lots or any other lots in said square east of square 708 which may be acquired by the said Griffith-Consumers Company or through which it may secure an easement, and to the pierhead line of the Anacostia River. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 1.)

§ 126. *Same; regulation and rentals.*—All the construction and use provided for in section 125 of this title shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 2.)

§ 127. *Same; title of United States not affected.*—No permission granted or enjoyed under sections 125, 126 of this title shall vest any title or interest in or to the land within the above-mentioned streets or affect any right, title, or interest of the United States in or to land within square east of square 708. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 3.)

§ 128. *Same; right of repeal reserved.*—The Congress reserves the right to amend, alter, or repeal sections 125-127 of this title at any time. (Apr. 14, 1932, 47 Stat. 79, ch. 99, § 4.)

§ 129. *Pipe lines for use of Gulf Refining Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to grant permission to the Gulf Refining Company, a corporation organized and existing under the laws of the State of Texas and registered and doing business in the District of Columbia, to lay down, construct, maintain, and use not more than ten pipe lines for the carriage of petroleum and petroleum products from a point or points within square 662 in the city of Washington, in the District of Columbia, said square being bounded on the north by R Street, on the south by S Street, on the east by Water Street and South Capitol Street, and on the west by Half Street (west), in and through Water Street, South Capitol Street, in an easterly direction to lot 4 of square south of square 708, which lot is bounded on the north by lands of the Standard Oil Company, on the south by S Street, extended, on the east by Anacostia River, and on the west by South Capitol Street. (June 3, 1932, 47 Stat. 168, ch. 206, § 1.)

§ 130. *Same; regulation and rental.*—All the construction and use provided for in section 129 of this title shall be in accordance with plans approved by the Commissioners of the District of Columbia, and under such regulations and rentals as the said commissioners may make and establish in connection herewith. (June 3, 1932, 47 Stat. 168, ch. 206, § 2.)

§ 130a. *Same; title of United States not affected.*—No permission granted or enjoyed under sections 129 and 130 of this title shall vest any title or interest in or to the land within the above-mentioned streets, or affect any right, title, or interest of the United States in or to land within square south of square 708. (June 3, 1932, 47 Stat. 168, ch. 206, § 3.)

§ 130b. *Same; right of repeal reserved.*—The Congress reserves the right to alter, amend, or repeal sections 129-130a of this title at any time. (June 3, 1932, 47 Stat. 168, ch. 206, § 4.)

§ 130c. *Closing of portion of U Street, southwest, authorized.*—The Commissioners of the District of Columbia are authorized to close, upon the recommendation of the National Capital Park and Planning Commission, that portion of U Street southwest, lying between First Street and Half Street southwest, as may be rendered useless or unnecessary by reason of the construction of an electric light and power plant on squares 665 and 667 adjoining said street: *Provided*, That the said Commissioners of the District of Columbia shall sell to the abutting property owners the land contained within the portion of said street to be closed for cash at a price not less than the assessed value of contiguous lots, and the money received therefrom paid into the Treasury of the United States to

the credit of the District of Columbia, and that such lands shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District. (June 15, 1932, 47 Stat. 318, ch. 265, § 1.)

§ 130d. *Closing of portion of Water Street authorized; construction and operation of pipe lines, etc., to Anacostia River.*—The Commissioners of the District of Columbia are authorized to close, upon the recommendation of the National Capital Park and Planning Commission, that portion of Water Street between U and V Streets southwest; and said commissioners are hereby authorized to give title to the owners of square 667 abutting on Water Street that portion of Water Street so closed lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest, upon notification from the Director of Public Buildings and Public Parks of the National Capital of the receipt from all claimants in absolute quitclaim deeds to the United States of all lands in square east of 667, east of the direct southerly projection of the west line of Half Street, as existing on June 15, 1932, north of U Street southwest, and such other land as may be acquired by the owners of square 667 in square east of south of 667, subject to the right of said owners to construct and operate any pipe lines and intake and discharge tunnels in or under the same to the Anacostia River, and provided that all of said lands deeded to private owners by the Commissioners of the District of Columbia under this section shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 318, ch. 265, § 2.)

§ 130e. *Pipe lines, etc., under streets south of T Street and east of Second Street, southwest.*—The Commissioners of the District of Columbia are authorized to grant any and all permits for the construction and operation of any pipe lines and intake and discharge tunnels in or under the public streets, roads, and highways south of T Street southwest and east of Second Street southwest to the Anacostia River as may become necessary in the construction, installation, and operation of any electric lighting and power plant, provided the same will not interfere with the development of other property located within this area. (June 15, 1932, 47 Stat. 319, ch. 265, § 3.)

§ 130g. *Pipe lines for use of Pennsylvania Greyhound Transit Company; installation authorized.*—The Commissioners of the District of Columbia are authorized and empowered to issue a permit to Pennsylvania Greyhound Transit Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, its successors and assigns, to construct, maintain, repair, renew, and use not more than four underground pipe lines from the parcel of real estate owned by The Philadelphia, Baltimore and Washington Railroad Company, and leased or to be leased to and occupied by Pennsylvania Greyhound Transit Company on the northerly side of New York Avenue Northeast, to the parcel of real estate owned by said Pennsylvania Greyhound Transit Company, in square 4038, parcel 142/25, in the city of Washington, District of Columbia, across and under New York Avenue Northeast, under the following conditions, namely: Said pipe lines shall be laid, constructed, and located as directed by the Commissioners of the District of Columbia, and under their inspection and the cost of such inspection, and of replacing pavements, curbs, and sidewalks disturbed, shall be paid by the party or parties to whom said permit shall be granted: *Provided*, That said pipe lines shall be used for the purpose of transporting petroleum and petroleum products, and for no other purpose whatsoever. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 1.)

§ 130h. *Same; regulation and rental.*—All the construction and use provided for in section 130g shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 2.)

§ 130i. *Same; permission not to affect title.*—No permission granted or enjoyed under sections 130g or 130h shall vest any title or interest in or to the land within the above-mentioned street. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 3.)



§ 130j. *Same; right of repeal reserved.*—Congress reserves the right to amend, alter, or repeal sections 130g-130i of this title. (Feb. 18, 1935, 49 Stat. 26, ch. 10, § 4.)

§ 130k. *Pipe lines for use of Smoot Sand and Gravel Company; installation authorized.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Smoot Sand and Gravel Corporation, a corporation organized and existing under the laws of the State of Delaware, the owner of squares 705, 707, and east of 708, and part of square 708, in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use pipe lines for the carriage of petroleum and petroleum products from any point or points within any such square or such part of square, in and through Half Street, First Street, P Street, Q Street, R Street, Potomac Avenue, reservation 246 and reservation 247, to any point or points within any such square or such part of square, or to the pierhead line of the Anacostia River. (Apr. 25, 1935, 49 Stat. 162, ch. 84, § 1.)

§ 130l. *Same; regulation and rental.*—All the construction and use provided for in section 130k shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith, and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Smoot Sand and Gravel Corporation, its successors, or assigns. (Apr. 25, 1935, 49 Stat. 162, ch. 84, § 2.)

§ 130m. *Same; permission not to affect title.*—No permission granted or enjoyed under section 130k or 130l shall vest any right, title, or interest in or to the land within the streets or reservations referred to in section 130k hereof. (Apr. 25, 1935, 49 Stat. 163, ch. 84, § 3.)

§ 130n. *Same; right of repeal reserved.*—The right to alter, amend, or repeal sections 130k-130m of this title is hereby expressly reserved. (Apr. 25, 1935, 49 Stat. 163, ch. 84, § 4.)

§ 130o. *Philadelphia, Baltimore and Washington Railroad Company; abandonment of substation authorized; repeal of certain laws.*—Sections 1-3 of the act approved February 3, 1909 (35 Stat. 593, c. 61), are hereby repealed; and, upon the completion by it of the substitute facilities authorized by section 2 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of said act of February 3, 1909, and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

§ 130p. *Waiting room on platform authorized.*—In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the city of Washington. The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

§ 130q. *Reversion of property to District of Columbia.*—The area in square south of 463 on the map of the city of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: *Provided*, That the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ 130r. *Right of repeal reserved.*—Congress reserves the right to alter, amend, or repeal this act. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

§ 130s. *Decatur Corporation; authority to lay pipe lines.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Decatur Corporation, a corporation organized in the

State of Delaware, owner of that part of square 1067, bounded by L Street Southeast on the north, Fourteenth Street Southeast on the west, Fifteenth Street Southeast on the east, and to the right-of-way of The Philadelphia, Baltimore and Washington Railroad on the south, in the city of Washington in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use not more than five pipe lines for the carriage of petroleum products from a point or points north of said railroad right-of-way within square 1067, in and through Fifteenth Street Southeast due south to the pier-head line of the Anacostia River. (Aug. 27, 1935, 49 Stat. 895, ch. 753, § 1.)

§ 130t. *Same; regulations and rentals.*—All the construction and use provided for in section 130s shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Decatur Corporation, its successors or assigns. (Aug. 27, 1935, 49 Stat. 895, ch. 753, § 2.)

§ 130u. *Same; title and interest.*—That no permission granted or enjoyed under sections 130s or 130t shall vest any title or interest in or to the land within Fifteenth Street Southeast. (Aug. 27, 1935, 49 Stat. 896, ch. 753, § 3.)

§ 130v. *Same; amendment.*—The right to alter, amend, or repeal sections 130s-130u is hereby expressly reserved. (Aug. 27, 1935, 49 Stat. 896, ch. 753, § 4.)

§ 107. *Construction, maintenance, and use of certain pipe lines for petroleum and petroleum products.*—The Commissioners of the District of Columbia are hereby authorized and empowered to grant permission to the Steuart Brothers, Incorporated, a corporation organized in the State of Delaware, owner of that part of square 1024, bounded by L Street Southeast on the north, Twelfth Street Southeast on the west, Thirteenth Street Southeast on the east, and the right-of-way of The Philadelphia, Baltimore and Washington Railroad on the south, in the city of Washington, in the District of Columbia, its successors and assigns, to lay down, construct, maintain, and use not more than five pipe lines for the carriage of petroleum and petroleum products from a point or points north of said railroad right-of-way within the square 1024, in and through Thirteenth Street Southeast due south to the Anacostia River. (June 20, 1936, 49 Stat. 1541, ch. 620, § 1.)

§ 107a. *Same; regulation by Commissioners.*—All the construction and use provided for in section 107 of this title shall be under such regulations and rentals as the Commissioners of the District of Columbia may make and establish in connection therewith and all plans and specifications for such construction shall be subject to their approval. The Commissioners of the District of Columbia shall have full authority to designate the location and to cause such repairs or relocation of said pipe lines as the public necessity may require, any such repairs or relocation to be at the expense of the Steuart Brothers, Incorporated, its successors or assigns. (June 20, 1936, 49 Stat. 1541, ch. 620, § 2.)

§ 107b. *Same; title or interest not vested.*—No permission granted or enjoyed hereunder shall vest any title or interest in or to the land within Thirteenth Street Southeast. (June 20, 1936, 49 Stat. 1541, ch. 620, § 3.)

§ 107c. *Same; right of repeal, etc., reserved.*—The right to alter, amend, or repeal sections 107-107b of this title is hereby expressly reserved. (June 20, 1936, 49 Stat. 1541, ch. 620, § 4.)

## Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

### Sec.

- 43-1401. Additional telegraph and telephone wires prohibited on streets—Extensions.
- 43-1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.



## Sec.

- 43-1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.
- 43-1404. Penalties.
- 43-1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.
- 43-1406. Regulations for inspection—Ducts for use of fire and police wires.
- 43-1407. Repairs and renewals.
- 43-1408. Right to alter or repeal reserved.
- 43-1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.
- 43-1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.
- 43-1411. Penalties.
- 43-1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.
- 43-1413. Conduits in public parks or reservations.
- 43-1414. Regulations for inspection—Ducts for use of fire and police wires.
- 43-1415. Repairs and renewals.
- 43-1416. Right to alter or repeal reserved—Rights under U. S. C., title 47, sections 1 et seq. preserved.
- 43-1417. Rights to build and lay conduits not to be paid for in event of condemnation.

**§ 43-1401 [26: 171]. Additional telegraph and telephone wires prohibited on streets—Extensions.**

The commissioners of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington: *Provided*, That the Commissioners of the District may, under such reasonable conditions as they may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in their judgment the public interest may require the exercise of such authority—such privileges as may be granted hereunder to be revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the Fiftieth Congress. (July 18, 1888, 25 Stat. 323, ch. 676.)

## CROSS REFERENCES

- Conduits in public parks and reservations, § 43-1413.
- Jurisdiction and control over public ways, § 7-102 and notes.
- Other provisions concerning electrical wiring, § 43-1101 et seq.
- Rules and regulations for construction of conduits, §§ 43-1406, 43-1414.
- Rules and regulations generally, § 1-226 and notes.

## NOTES TO DECISIONS

## EXISTING LINES

Under this section the Commissioners of the District might authorize the wires of any "existing telegraph, telephone or electric light company," to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co. v. Manning* (186 U. S. 238, 46 L. Ed. 1144, 22 Sup. Ct. 881).

**§ 43-1402 [26: 178]. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.**

All telephone poles and wires attached thereto not the property of the United States or the District of

Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at Second and B Streets southeast and running thence along B Street south, Third Street west, Missouri Avenue, Sixth Street west, B Street north, Twenty-third Street west, Rock Creek, Cincinnati Street, Columbia Road, Sixteenth Street west (extended), Park Street, Whitney Avenue, Eleventh Street west, R Street north, New Jersey Avenue, C Street north, and Second Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Commissioners, and it is hereby made the duty of said Commissioners to enforce compliance with the provisions of sections 43-1402 to 43-1408, inclusive, as expeditiously as may be consistent with the public interests; and the said Commissioners are hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia, to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of sections 43-1402 to 43-1408, inclusive, and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service. (June 20, 1902, 32 Stat. 393, ch. 1136, § 1.)

## NOTES TO DECISIONS

## AUTHORITY OF COMMISSIONERS

Commissioners of the District might authorize wires of telephone, telegraph or electric light company to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co. v. Manning* (186 U. S. 238, 46 L. Ed. 1144, 22 Sup. Ct. 881.)

**§ 43-1403 [26: 179]. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.**

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Commissioners a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval



by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in section 43-1402 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Commissioners may, in accordance with the provisions of sections 43-1402 to 43-1408, inclusive, permit to remain for the purpose of distributing wires for house connections. (June 20, 1902, 32 Stat. 393, ch. 1136, § 2.)

#### § 43-1404 [26: 180]. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in section 43-1402 who shall wilfully neglect or refuse to remove the same, as provided in section 43-1403, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (June 20, 1902, 32 Stat. 394, ch. 1136, § 3.)

#### § 43-1405 [26: 181]. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to authorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in section 43-1402 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43-1402 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satis-

factory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43-1402 to 43-1408, inclusive, which is to cause to be removed from the streets and avenues within the section of said District described in section 43-1402 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in said District and without denying to the public reasonable telephone facilities at all times. (June 20, 1902, 32 Stat. 394, ch. 1136, § 4.)

#### § 43-1406 [26: 182]. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43-1402 to 43-1408, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided*, That in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire-alarm or police-patrol wires or cables, carrying low potential currents of electricity, free of charge: *And provided further*, That the number of ducts so reserved in any one conduit shall not be more than three. (June 20, 1902, 32 Stat. 395, ch. 1136, § 5.)

#### CROSS REFERENCE

See note to § 43-1401.

#### § 43-1407 [26: 183]. Repairs and renewals.

The said commissioners are empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside of the section described in section 43-1402 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia. (June 20, 1902, 32 Stat. 395, ch. 1136, § 6.)

#### § 43-1408 [26: 184]. Right to alter or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43-1402 to 43-1408, inclusive. (June 20, 1902, 32 Stat. 395, ch. 1136, § 7.)

#### § 43-1409 [26: 185]. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said commissioners, and it is hereby made the duty



of said commissioners to enforce compliance with the provisions of sections 43-1409 to 43-1417, inclusive, as expeditiously as may be consistent with the public interests; and the said commissioners are hereby empowered, from time to time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of sections 43-1409 to 43-1417, inclusive, and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service. (Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1.)

## CROSS REFERENCE

See note to § 43-1401.

§ 43-1410 [26: 186]. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in said District, shall prepare and submit to the said commissioners a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in section 43-1409, or in such part thereof as said Commissioners shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires thereon, except such as said commissioners may, in accordance with the provisions of sections 43-1409 to 43-1417, inclusive, permit to remain for the purpose of distributing wires for house or other connections. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2.)

§ 43-1411 [26: 187]. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached

thereto on or over any street or avenue within the said limits described in section 43-1409, which shall willfully neglect or refuse to remove the same, as provided in section 43-1409, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3.)

§ 43-1412 [26: 188]. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or house-top fixtures in one square to alley poles or house-top fixtures in another square for the purpose of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43-1409 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43-1409 to 43-1417, inclusive, which is to cause to be removed from the streets and avenues within the said limits described in section 43-1409 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4.)

§ 43-1413 [26: 189]. Conduits in public parks or reservations.

Any officer of the United States Government charged with the care, maintenance, and supervision of any public park or reservation may grant permission to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to the United States or its properties. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a.)

## CROSS REFERENCE

Jurisdiction and control of public parks and reservations, § 8-101 et seq.



**§ 43-1414 [26: 190]. Regulations for inspection—Ducts for use of fire and police wires.**

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43-1409 to 43-1417, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided*, That in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police-patrol wires or cables carrying low potential currents of electricity, free of charge: *And provided further*, That the number of ducts so reserved in any one conduit shall not be more than two. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5.)

**CROSS REFERENCE**

Rules and regulations, see notes to § 43-1401.

**§ 43-1415 [26: 191]. Repairs and renewals.**

The said commissioners are empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or house-top wires within the said District and outside of the limits described in section 43-1409 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6.)

**§ 43-1416 [26: 192]. Right to alter or repeal reserved—Rights under U. S. C., title 47, section 1 et seq. preserved.**

Congress reserves the right to alter, amend, or repeal sections 43-1409 to 43-1417, inclusive, but nothing herein shall abridge or lessen the rights granted telegraph companies under title 47, section 1 et seq. of the Code of the Laws of the United States of America. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 7.)

**§ 43-1417 [26: 193]. Rights to build and lay conduits not to be paid for in event of condemnation.**

If at any time the District of Columbia or the National Government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights accorded under sections 43-1409 to 43-1417, inclusive, to build and lay such conduits. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8.)

**Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES**

**Sec.**

- 43-1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.
- 43-1502. Water department—Operations of, to be under direction of Engineer's Office.
- 43-1503. Water supply—Rules and regulations.
- 43-1504. Fiscal year of water department.
- 43-1505. Water-main taxes and rents to be uniform.
- 43-1506. Water registrar.

**Sec.**

- 43-1507. Prevention of water waste.
- 43-1508. Use of Potomac water for mechanical and manufacturing purposes.
- 43-1509. Water supply in large quantities to be determined by meters maintained by consumers.
- 43-1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.
- 43-1511. Assessments for water mains.
- 43-1512. Assessor to give notice of assessments.
- 43-1513. Water-main and service sewer assessments payable in three installments.
- 43-1514. Assessment of property in county of Washington for water mains and service sewers.
- 43-1515. Relevying assessments when assessments declared void.
- 43-1516. Disposal of funds received by collector of taxes.
- 43-1517. Definition—Service sewer.
- 43-1518. Refund of overpaid assessments.
- 43-1519. Refund of water rents erroneously paid.
- 43-1520. Water rents—Rates.
- 43-1521. Commissioners to have authority to collect water rates in advance.
- 43-1522. Water rates not to be a source of revenue.
- 43-1523. Water tax to be a fund to defray cost of water distribution.
- 43-1524. Water rents from Washington Aqueduct to be applied to improvement of same.
- 43-1525. Fire plug tax.
- 43-1526. Rates.
- 43-1527. To cease upon introduction of water.
- 43-1528. Levy upon discontinuance of water service.
- 43-1529. Water not to be diverted beyond district.
- 43-1530. Commissioners authorized to deliver water in nearby Maryland—Contract.
- 43-1531. Delivery of water to Arlington County, Virginia.
- 43-1532. Acquisition of land and right of way for pipe lines.
- 43-1533. Potomac water to be furnished to charitable institutions without charge.
- 43-1534. Unlawful tapping of water pipe—Penalty.
- 43-1535. Chief of Engineers to inform United States attorney for District of Columbia of all violations.
- 43-1536. Penalty for damaging or defacing water pipes.
- 43-1537. Mains or pipes—Laying for use of public buildings.
- 43-1538. Unauthorized opening.

**§ 43-1501 [20: 1371]. Water mains, pipes, and fire-plugs—Commissioners to have power to erect.**

The Commissioners of the District of Columbia shall have the power to lay water mains and water pipes and to erect fire plugs and hydrants wherever the same may be in their judgment necessary for the public safety, comfort, or health. (R. S., D. C., § 204; June 17, 1890, 26 Stat. 159, ch. 428.)

**CROSS REFERENCES**

- Annual estimate of expenses, § 47-210.
- Construction of sewers and water-mains under District of Columbia Alley Dwelling Act, § 5-103.
- Cutting trenches or removing materials from public highways, reservations, § 7-615.
- Fees for connections to sewers, water-main, gas-main or other underground structure, § 1-726.
- Jurisdiction and control over public ways, § 7-102 and note.

**NOTES TO DECISIONS**

**IN GENERAL**

By this act Congress enacted that the Commissioners of the District shall have the power to lay water mains, pipes, fireplugs, and hydrants for the public safety, comfort, or health. *Parsons v. District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521); *Wight v. Davidson* (181 U. S. 371, 45 L. Ed. 900, 21 Sup. Ct. 616.)



§ 43-1502 [20: 1372]. Water department—Operations of to be under direction of Engineer's Office.

The operations of the water department of the District of Columbia shall be under the direction of the engineer's office of the District, subject to the control of the commissioners. (July 1, 1882, 22 Stat. 143, ch. 263, § 2.)

§ 43-1503 [20: 1373]. Water supply—Rules and regulations.

Full power is given to the commissioners to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in title 40, section 51, of the Code of Laws of the United States. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city. (R. S., D. C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

#### AMENDMENT

This section is a composite of credits cited in the history line.

#### CROSS REFERENCES

General limitation on power of Commissioners, § 1-801.  
Rules and regulations generally, § 1-226.

#### NOTES TO DECISIONS

##### JURISDICTION

United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. *Parsons v. District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521).

§ 43-1504 [20: 1374]. Fiscal year of water department.

The fiscal year of the water department of the District of Columbia shall conform to the regular fiscal year of the General Government; the rates shall be levied and collected annually. (July 1, 1882, 22 Stat. 144, ch. 263, § 2.)

§ 43-1505 [20: 1375]. Water-main taxes and rents to be uniform.

Water-main taxes and water rents shall be uniform in said District. (June 10, 1879, 21 Stat. 9, ch. 16.)

§ 43-1506 [20: 1376]. Water registrar.

The water registrar shall perform such duties connected with the water department of the District as may be proper and necessary, under the direction of the commissioners. He shall give bonds for the faithful performance of his duty in the sum of ten thousand dollars. (Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

#### COMPILER'S NOTE

The acts of 1874 and 1878 are the organic acts of those years, and the sections referred to are those which confer upon and define the powers of the Commissioners.

#### CROSS REFERENCE

General limitations on power of Commissioners, § 1-801.

§ 43-1507 [20: 1377]. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded from any places where a waste of water is occurring. (R. S., D. C., § 214.)

§ 43-1508 [20: 1378]. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia. (R. S., D. C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

§ 43-1509 [20: 1379]. Water supply in large quantities to be determined by meters maintained by consumers.

The supply of water to all manufacturing establishments, hotels, livery-stables, and other places requiring a large quantity, shall be determined by meters erected and maintained at the expense of the consumer. (R. S., D. C., § 216.)

§ 43-1510 [20: 1380]. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.

The Commissioners of the District of Columbia are authorized and directed, whenever in their judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed. (Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1.)

#### CROSS REFERENCES

Jurisdiction and control over public ways, § 7-102 and notes.

Laying pipes in streets under the control of the United States, § 7-1204.

Laying water mains and sewers on permit plan, §§ 7-608, 7-609.

Special assessments generally, § 47-1101 et seq.

§ 43-1511 [20: 1381]. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of three dollars per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water-main shall be laid, and for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of one dollar per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid: *Provided*, That assessments for water mains and service sewers in the case of lots or parcels of land not more than one



hundred feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than one hundred feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water-mains or service sewers are laid abutting the same: *Provided*, That corner lots shall be assessed for water-mains and service sewers only on their short fronts with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to assessment, as hereinbefore provided: *Provided*, That the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous Act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains: *Provided further*, That when the Commissioners of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water-main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848.)

#### AMENDMENTS

Act of 1904 replaced the act of 1894 and included assessments for service sewers as well as water-mains.

Act of 1927 provided that rates of assessment in effect on June 30, 1927, for laying or constructing water mains and service sewers in the District of Columbia under provisions of act of 1904 should continue in effect during the remainder of the fiscal year 1928 and thereafter.

Act of 1930 increased the rate previously in effect.

#### CROSS REFERENCE

See note to § 43-1510.

### NOTES TO DECISIONS UNDER PRIOR ACT

#### ASSESSMENT IN EXCESS OF COST

Assessment exceeding actual cost of the work is not bad where the laying of the main was a part of a water-system and the assessment included a fund to keep the system in efficient repair. *Parsons v. District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521).

#### FRONTAGE RULE INAPPLICABLE

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits. If considered as a repair of the avenue, in the form of repaving, its validity must be condemned on the theory that it taxes individual property fronting on the improvement for all or fixed portion of the expense, to exemption of all other property in the municipality. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

#### NECESSITY AND BENEFITS OF WORK

This act must be deemed conclusive alike of the question of the necessity of the work, and of the benefits as against abutting property; and to open such questions for review by the courts, on the petition of any and every property holder, would create endless confusion; and when questions submitted to Commission, the inquiry becomes in its nature judicial. *Parsons v. District of Columbia* (170 U. S. 45, 42 L. Ed. 943, 18 Sup. Ct. 521); *Wight v. Davidson* (181 U. S. 900, 45 L. Ed. 900, 21 Sup. Ct. 616).

#### POWERS OF CONGRESS

Congress has the power to provide for assessments in the District of Columbia for the opening of streets. *Wight v. Davidson* (181 U. S. 371, 45 L. Ed. 900, 21 Sup. Ct. 616).

Congress of the United States has the entire control over the District for every purpose of government. *Sims v. Rives* (66 App. D. C. 24, 84 Fed. (2d) 871).

### § 43-1512 [20: 1382]. Assessor to give notice of assessments.

The assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within sixty days after the completion of the main or service sewer, and the owner or owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the assessor of the District of Columbia. If there be no agent or tenant known to said assessor, and the owner or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and can not be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for three successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3.)

#### CROSS REFERENCE

See note to § 43-1510.

### § 43-1513 [20: 1383]. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in three equal installments, the first of which shall be due and payable without interest within thirty days from date of service of notice or of the last publication of notice as the case may be, the second within one year, and the third within two years from the date of assessment, and interest at the rate of six per centum per annum shall be charged on all amounts which shall remain unpaid at the expiration of thirty days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full: *Provided*, That if any installment of any assessment for water main or service sewer levied under the provisions of sections 43-1510 to



43-1517, inclusive, shall not be paid when due and payable the property against which said assessment was levied may be sold for said delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said instalment shall not have been paid prior to said sale. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4.)

## CROSS REFERENCES

Payment of taxes and special assessments on family dwellings, § 47-901 et seq.

See note to § 43-1510.

**§ 43-1514 [20: 1384]. Assessment of property in county of Washington for water mains and service sewers.**

Property in the county of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided: *Provided*, That where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of fifty feet on each side of said connection with a depth of one hundred feet, except that no double assessment shall be levied; said assessment to be levied within sixty days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the fifty feet on each side of said connection, with a depth of one hundred feet, shall not be again assessed: *Provided further*, That assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within sixty days after the recording of such subdivision in the office of the surveyor of the District of Columbia, except in cases where said lots or parcels of land have been previously assessed for the same main or service sewer. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5.)

**§ 43-1515 [20: 1385]. Relevying assessments when assessments declared void.**

The assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the District Court of the United States for the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in sections 43-1510 to 43-1517, inclusive: *Provided*, That such reassessment shall be made within sixty days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7.)

**§ 43-1516 [20: 1386]. Disposal of funds received by collector of taxes.**

All sums received by the collector of taxes under the provisions of sections 43-1510 to 43-1517, inclusive, on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8.)

**§ 43-1517 [20: 1387]. Definition—Service sewer.**

A service sewer within the meaning of the provisions of sections 43-1510 to 43-1517, inclusive, shall be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the sewer division of the engineer department of the District of Columbia. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9.)

**§ 43-1518 [20: 1388]. Refund of overpaid assessments.**

In all cases where a water-main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation. (June 2, 1900, 31 Stat. 252, ch. 612, § 2.)

## CROSS REFERENCE

Refund of taxes generally, § 47-1017.

**§ 43-1519 [20: 1389]. Refund of water rents erroneously paid.**

The Commissioners of the District of Columbia are hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes: *Provided*, That application for refund shall be made within two years after such erroneous payment. And after March 3, 1905, the said commissioners are authorized to cause to be refunded in the same manner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for furnishing stopcock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund. (Mar. 3, 1905, 33 Stat. 912, ch. 1406.)

## CROSS REFERENCE

Refund of taxes and assessments generally, § 47-1017.

**§ 43-1520 [20: 1390]. Water rents—Rates.**

The following schedule of water rents in the District of Columbia shall be fixed by the commissioners of said District:

For the use of water for domestic purposes through unmetered services, \$9.85 per annum for all tenements two stories high, or less, with a front width of



sixteen feet, or less; for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above. For business places that are not required to install meters under existing regulations, the rates in effect June 30, 1930, to be increased by 40 per centum per annum. For the use of water through metered services, a minimum charge of \$8.75 per annum for seven thousand five hundred cubic feet of water, and 7 cents per one hundred cubic feet for water used in excess of that quantity. For water for building construction purposes when not supplied through a meter, 6 cents per one thousand brick and 3 cents per cubic yard of concrete, with a minimum charge of \$1 for each separate building project. All water required for purposes which are not covered by the foregoing classifications shall be paid for at such rates as may be fixed by the Commissioners of the District of Columbia. (July 3, 1930, 46 Stat. 988, ch. 848.)

§ 43-1521 [20: 1391]. Commissioners to have authority to collect water rates in advance.

The commissioners have authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter. (R. S., D. C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

#### COMPILER'S NOTE

The acts of 1874 and 1878 are the organic acts of those years, and the sections referred to are those which confer upon and define the powers of the Commissioners.

#### CROSS REFERENCE

General limitation on power of Commissioners, § 1-801.

§ 43-1522 [20: 1392]. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water, but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water-distribution. (R. S., D. C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

#### AMENDMENTS

Act of 1876 extended water taxes, water rents, and taxation for water mains, over all parts of the District of Columbia.

Act of 1885 extended points of water supply beyond Washington and Georgetown.

§ 43-1523 [20: 1393]. Water tax to be a fund to defray cost of water distribution.

The water tax authorized to be levied and collected by the provisions of this chapter shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution. (R. S., D. C., § 203.)

§ 43-1524 [20: 1394]. Water rents from Washington Aqueduct to be applied to improvement of same.

All water rents derived from the Washington Aqueduct shall be applied to the improvement and repair of the same, and for no other purpose. (R. S., D. C., § 217.)

§ 43-1525 [20: 1395]. Fire plug tax.

To aid in the erection, maintenance, and efficiency of fire-plugs, a special annual tax may be levied on all buildings in the City of Washington within five hundred feet of any main water-pipe, into which, or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water-rate in accordance with law. (R. S., D. C., § 205; June 17, 1890, 26 Stat. 159, ch. 428.)

§ 43-1526 [20: 1396]. Rates.

The fire-plug tax shall be levied with reference to the value of the building so taxed, and shall not be more than five dollars nor less than one dollar per year. (R. S., D. C., § 206.)

§ 43-1527 [20: 1397]. To cease upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fire-plug tax thereon shall cease. (R. S., D. C., § 207.)

§ 43-1528 [20: 1398]. Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fire-plug tax from the date of the discontinuance of the water. (R. S., D. C., § 208.)

§ 43-1529 [20: 1399]. Water not to be diverted beyond District.

Except as provided in sections 43-1530 and 43-1531 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

§ 43-1530 [20: 1400]. Commissioners authorized to deliver water in nearby Maryland—Contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States Government residing in Maryland near the District of Columbia boundary, the Commissioners of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by chapter 313 of the acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, are authorized to deliver water from the water-supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water-



mains with water-mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Commissioners of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally-appointed successor shall secure authority from the Legislature of the state of Maryland to enter into an agreement with the said Commissioners of the District of Columbia outlining the conditions under which the service is to be rendered.

The agreement between the Commissioners of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things—

First. That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the commissioners of the District of Columbia.

Second. The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4 per centum per annum and a suitable allowance for depreciation.

Third. That payments for water so furnished shall be made through the collector of taxes of the District of Columbia at such times as the Commissioners of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited.

Fourth. That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia.

Fifth. That the Commissioners of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in their opinion, there is a wastage of water they shall have the right to curtail the supply to said sanitary district to the amount of such wastage. (Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100.)

#### COMPILER'S NOTE

This section, after having been amended by the act of June 30, 1930, 46 Stat. 838, ch. 764, was repealed and reenacted as set out in the text by the act of 1932.

#### § 43-1531 [20: 1401]. Delivery of water to Arlington County, Virginia.

The Secretary of War is hereby authorized, in his discretion and subject to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the Federal water supply pumping station at the Dalecarlia Reservoir to the Arlington County sanitary district, created by an act of the General Assembly of the state of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge:

*Provided*, That all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of War, the payments to be made at such time and under such regulations as the Secretary of War may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited: *And provided further*, That the Secretary of War may revoke at any time any permit for the use of said water that may have been granted. (Apr. 14, 1926, 44 Stat. 251, ch. 140, § 1.)

#### § 43-1532 [20: 1402]. Acquisition of land and right of way for pipe lines.

The Secretary of War is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights of way for pipe lines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized. (Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2.)

#### CROSS REFERENCE

Condemnation generally, § 16-601 and notes.

#### § 43-1533 [20: 1403]. Potomac water to be furnished to charitable institutions without charge.

The Commissioners of the District of Columbia are authorized to furnish Potomac water without charge to charitable institutions and such institutions as receive annual appropriations from Congress, to an amount to be fixed in each case by the said commissioners, not to exceed a rate of one hundred gallons per day for each inmate of said institutions; and for all water used beyond such an amount, to be ascertained by water meters installed and maintained at the expense of the consumer, the institution shall be charged at the prevailing rate for the use of water in the District of Columbia, which shall be collected in the manner prescribed for the collection of water rents. The said commissioners are further authorized to furnish Potomac water without charge to churches to an amount to be fixed in each case by the said commissioners, and any amount used in excess of the amount allowed, to be ascertained in the manner aforesaid, shall be charged and collected as hereinbefore described. For the purposes of this section a charitable institution is one whose objects are primarily eleemosynary; and nothing herein contained shall be so construed as to include educational institutions other than charity schools wholly supported by voluntary contributions or institutions supported wholly or in part by Congressional appropriation. (Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1.)

#### § 43-1534 [20: 1404]. Unlawful tapping of water pipe—Penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding



five hundred dollars, or to imprisonment for a term not exceeding one year. (R. S., D. C., § 218.)

STATUTORY REFERENCE

See U. S. C., title 40, § 56.

§ 43-1535 [20: 1405]. Chief of Engineers to inform United States attorney for District of Columbia of all violations.

It is the special duty of the Chief of Engineers to bring to the notice of the attorney of the United States for the District of Columbia, or to the grand jury, any infraction of section 43-1534. (R. S., D. C., § 219.)

§ 43-1536 [20: 1406]. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service-pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more than two years. (R. S., D. C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

COMPILER'S NOTE

The 1885 act provides: "And hereafter the supply of Potomac water may be extended to points in the District

beyond the limits of Washington and Georgetown upon like terms and conditions as are provided by law for the supply of the same in those cities."

§ 43-1537 [20: 1407]. Mains or pipes—Laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law. (R. S., U. S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

COMPILER'S NOTE

The 1895 act provides in part: "All general laws, ordinances and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown."

§ 43-1538 [20: 1408]. Unauthorized opening.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than \$50 nor more than \$500. (R. S., U. S., § 1803.)







## TITLE 44.—RAILROADS AND OTHER CARRIERS

Chap.	Sec.
1. Railroads .....	44-101
2. Street Railways and Bus Lines .....	44-201
3. Passenger Motor Vehicles for Hire .....	44-301
4. Employers' Liability Act .....	44-401

### Chapter 1.—RAILROADS

Sec.	Sec.
44-101. Sale of unclaimed freight.	
44-102. Disposition of property under court order.	
44-103. Disposition of proceeds of sale.	
44-104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.	
44-105. Waiting-room on platform authorized.	
44-106. Reversion of property to District of Columbia—Adequate walkways provided.	
44-107. Right of repeal reserved.	

#### § 44-101 [19: 86]. Sale of unclaimed freight.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of six months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of six months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving three weeks' notice of the time and place of sale, once a week for three successive weeks, in a newspaper published in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642.)

#### § 44-102 [19: 87]. Disposition of property under court order.

Upon the application of such carrier, verified by affidavit, to the District Court of the United States for the District of Columbia holding a special term, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in section 44-101, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet: *Provided*, That in case of perishable property the affidavit and proceedings required and authorized by this section may be had before the municipal court in cases where the value

of the property involved does not exceed one thousand dollars. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1.)

#### AMENDMENTS

Act of 1902 added at the end of this section of the 1901 act the words "in cases where the value of the property involved does not exceed three hundred dollars."

Act of 1909 changed the name from justice of peace court to municipal court of the District of Columbia.

Act of 1921 amended this section by changing the end thereof from "three hundred dollars" to "one thousand dollars."

#### § 44-103 [19: 88]. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either section 44-101 or 44-102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644.)

#### § 44-104 [19: 130o]. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.

Upon the completion by it of the substitute facilities authorized by section 44-105 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said Act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

#### § 44-105 [19: 130p]. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the city of Washington, The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

#### § 44-106 [19: 130q]. Reversion of property to District of Columbia—Adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: *Provided*, That the said Philadelphia, Baltimore and Washing-



ton Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ 44-107 [19: 130r]. Right of repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 44-104 to 44-106. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

## Chapter 2.—STREET RAILWAYS AND BUS LINES

### Sec.

- 44-201. Competing lines—Certificates of convenience and necessity.
- 44-202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.
- 44-203. Prosecutions to be by information.
- 44-204. Fenders required on street cars.
- 44-205. Glass vestibules to be provided for motormen.
- 44-206. Construction of duct lines authorized.
- 44-207. Transfers to be issued only to passenger entitled thereto.
- 44-208. Reciprocal transfer and trackage agreements.
- 44-209. Type of rails to be used.
- 44-210. Underground lines prohibited.
- 44-211. Removal of disused tracks.
- 44-212. Free transfers.
- 44-213. Free transportation of policemen and firemen.
- 44-214. Reduced fares for school children.
- 44-215. Annual reports to Congress.

§ 44-201. Competing lines—Certificates of convenience and necessity.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Utilities Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public. (Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4.)

### CROSS REFERENCES

Merger of street railroads, § 43-501 et seq.

Powers of Public Utilities Commission, § 43-202 and notes.

### PAVING REGULATIONS—REPEAL

All provisions of law making it incumbent upon any street-railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided*, That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges: *Provided further*, That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right-of-way occupied by its tracks as provided by section 8 of the Act of Congress entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916, as amended to date. (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

§ 44-202 [26: 122]. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.

Every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Utilities Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said commission, or permitting such violation, shall be punished by a fine of not more than one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the commission made thereunder, shall be regarded as a separate offense. (May 23, 1908, 35 Stat. 250, ch. 190, § 16.)

### COMPILER'S NOTE

As originally enacted, the words "not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs" after the words "expeditious passage" were included. These speed limits have been superseded by various traffic regulatory laws. See §§ 40-602 (j), 40-603, 40-605.

### CROSS REFERENCES

Cars required to be brought to full stop at certain intersections, § 4-112.

Merger of street-railway corporations operating in District of Columbia, §§ 43-501 to 43-503 and notes.

Other provisions for care, maintenance, and repair of street cars, § 43-208.

Prosecutions hereunder, § 44-203.

### NOTES TO DECISIONS

#### CONSTRUCTION OF ACT

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44-205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

#### PROSECUTIONS, CORPORATION COUNSEL

Prosecutions under this section should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D. C. 469).

§ 44-203 [26: 123]. Prosecutions to be by information.

Prosecutions for violations of any of the provisions of sections 44-202, 44-206, and 44-207 shall be on



information of the Public Utilities Commission filed in the police court by or on behalf of the commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

#### COMPILER'S NOTE

The 1908 act was worded "provisions of this act." This act contained 18 sections of which four (§§ 4, 15, 16 and 17) are contained in this code as §§ 44-206, 44-207, 44-202, 44-203, respectively.

#### AMENDMENT

The original act contained the words "Interstate Commerce Commission" which have been replaced herein by the words "Public Utilities Commission" in view of the 1913 act.

#### CROSS REFERENCES

Criminal offenses generally, § 43-901 et seq.

See notes to § 44-202. *United States v. Capital Trac. Co.* (38 App. D. C. 469); *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 44-204 [26: 162]. Fenders required on streetcars.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horse power in the District of Columbia to be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said commissioners of any fender or fenders deemed by them to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District: *Provided*, That nothing contained in this section shall operate to relieve any street railway company from liability for accidents on its lines. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

#### CROSS REFERENCES

Other provisions for care, maintenance, and repair of street cars, § 43-208.

Rules and regulations generally, § 43-202 and notes.

§ 44-205 [26: 163]. Glass vestibules to be provided for motormen.

Every person or corporation operating street cars in the District of Columbia shall provide each of the same with a glass vestibule, surrounding, as nearly as possible, the place where the motorman, operating said car stands, so that said motorman shall be protected from inclement weather. Every person or corporation who or which shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five hundred dollars for each and every day any street car is operated not provided with the vestibule required by this section: *Provided*, however, That the requirements of this section shall not apply to cars operated from the 1st day of April to the 1st day of November of each and every year. (Mar. 3, 1905, 33 Stat. 1001, ch. 1434.)

#### CROSS REFERENCE

See § 44-204 and notes.

#### NOTES TO DECISIONS

##### IN GENERAL

The act is valid and was not impliedly repealed by act May 23, 1908, § 16 (§ 44-202) or act of March 4, 1913, § 8, par. 96 (§§ 43-207, 43-208). *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999)

This act is not void for indefiniteness. *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

#### OPEN VESTIBULE

Vestibule open on each side of platform did not comply with this act. *Washington R. & Elec. Co. v. District of Columbia* (56 App. D. C. 134, 10 Fed. (2d) 999).

§ 44-206 [26: 164]. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Commissioners of the District of Columbia, and the cost thereof shall be borne and paid solely by said street railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section. (May 23, 1908, 35 Stat. 247, ch. 190, § 4.)

#### CROSS REFERENCES

Easement to Washington Railway and Electric Company over Michigan Avenue, § 7-131.

Merger of street railway corporations operating in District of Columbia, §§ 43-501 to 43-503 and notes.

Prosecutions hereunder, § 44-203.

§ 44-207 [26: 165]. Transfers to be issued only to passenger entitled thereto.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding twenty-five dollars. (May 23, 1908, 35 Stat. 250, ch. 190, § 15.)

#### CROSS REFERENCES

Prosecutions hereunder, § 44-203.

Rates and rate making, § 43-401 and notes.

#### NOTES TO DECISIONS

##### PROSECUTIONS, CORPORATION COUNSEL

Prosecutions for violating act should be conducted by the corporation counsel in the name of the District of Columbia. *United States v. Capital Trac. Co.* (38 App. D. C. 469).

§ 44-208 [26: 167]. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after August 2, 1894, connect, with the lines of any other street railway company, is hereby required to make reciprocal transfer arrangements with such street railway companies, and to furnish such facilities therefor as the public convenience may require, and



to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies; and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the District Court of the United States for the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5.)

#### COMPILER'S NOTE

This section would seem to be in abeyance due to the merger of street railway corporations operating in the District of Columbia, §§ 43-501 to 43-503 and notes.

#### CROSS REFERENCE

Joint use of utility facilities, § 43-302 and note.

### § 44-209 [26: 168]. Type of rails to be used.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington: *Provided*, That the foregoing requirements as to rails and roadbed shall not apply to street railroads outside the City of Washington. (Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

#### AMENDMENT

Act 1895 abolished provisions as to City of Georgetown, and its street regulations were given to Washington.

#### CROSS REFERENCE

Jurisdiction and control over public ways, § 7-102 and note.

### § 44-210 [5: 332]. Underground lines prohibited.

It shall be unlawful for any street railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of sections 44-210 to 44-212 the company violating it shall be subject to a fine of ten dollars for every car operated in violation of the provisions of sections 44-210 to 44-212, said fine to be collected and applied in the same manner as is provided by section 44-211. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711.)

#### COMPILER'S NOTE

This section would seem to be in abeyance due to the merger of street railway corporations operating in the District of Columbia, § 43-501 to 43-503 and notes.

### § 44-211 [5: 331]. Removal of disused tracks.

Whenever the track or tracks, or any part thereof, of any street railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to re-

move said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the police court of said District, in the name of said District, as other fines and penalties are recovered in said court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 710; June 30, 1902, 32 Stat. 534, ch. 1329.)

#### AMENDMENT

Act of 1902 amended act of 1901 by striking out the words "approved by the Commissioners" and inserting in lieu thereof the words "as required by its charter."

#### CROSS REFERENCE

Jurisdiction and control over public ways, § 7-102 and notes.

#### NOTES TO DECISIONS

##### ABANDONED STRUCTURES

Abandoned structures in streets or highways are, when ordered removed by competent authority, illegally in such streets or highways. *Capital Transit Co. v. Hazen* (68 App. D. C. 91, 93 Fed. (2d) 250).

### § 44-212 [5: 333]. Free transfers.

All street railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the city of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712.)

#### CROSS REFERENCE

Power of Public Utilities Commission over rates, § 43-401.

### § 44-213 [26: 166]. Free transportation of policemen and firemen.

The several street railway companies in the District of Columbia are authorized and required to transport free of charge all members of the Metropolitan police, crossing police, park police, and fire department of the District of Columbia when in uniform and in the performance of their duties. (Mar. 3, 1915, 38 Stat. 900, ch. 80; Sept. 1, 1916, 39 Stat. 683, ch. 433.)

#### AMENDMENT

Acts of 1915 and 1916 have the same wording.

#### CROSS REFERENCE

Rates and rate making, § 43-401 and notes.

#### FURNISHING TRANSPORTATION FOR PERSONS ON OFFICIAL BUSINESS

The Commissioners are authorized, in their discretion, to furnish necessary transportation in connection with strictly official business of the District of Columbia by the purchase of street car and bus fares from appropriations contained in this act: *Provided*, That the expenditures herein authorized shall be so apportioned as not to exceed a total of \$11,100: *Provided further*, That the provisions of this paragraph shall not include the appropriations herein made for the fire and police departments. (July 15, 1939, 53 Stat. 1010, ch. 281, § 1; June 12, 1940, 54 Stat. 312, ch. 333, § 1.)



§ 44-214 [26: 166a]. Reduced fares for school children.

The Public Utilities Commission of the District of Columbia is empowered and directed to fix reduced fares for school children not over eighteen years of age, going to and from school on street railway and bus lines in the District of Columbia, under such reasonable rules and regulations as the commission may establish: *Provided*, That such reduced fares shall not exceed three cents. (Feb. 25, 1931, 46 Stat. 1419, ch. 302.)

#### COMPILER'S NOTE

The act of January 14, 1933, 47 Stat. 759, ch. 10, § 1, par. 19, provides: "The Public Utilities Commission shall fix the rate of fare at 3 cents for school children not over eighteen years of age, going to and from public, parochial, or like schools in the District of Columbia, and shall establish rules and regulations governing the use thereof: *Provided*, That upon the acceptance of this agreement by the parties and the completion of the unification, the provisions of the act entitled 'An act to provide for the transportation of school children in the District of Columbia at a reduced fare,' approved February 27, 1931, shall become inoperative." The figure "27" was contained in the original. It obviously should be 25.

#### CROSS REFERENCE

Rates and rate making, § 43-401 and notes.

§ 44-215 [26: 169]. Annual reports to Congress.

Every street railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the first day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of one year ending the thirty-first day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures; including land damages; cost of cars, horses, harness, and motors and other machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical attendance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources, specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum;

total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether passengers, employees, or other persons. (June 10, 1896, 29 Stat. 320, ch. 395, § 10.)

#### CROSS REFERENCE

Records and reports of utilities generally, § 43-318.

#### NOTES TO DECISIONS

##### REIMBURSEMENT OF DEFICITS

Reimbursement of railway company for deficits incurred in extending bus lines were properly included in gross receipts for tax purposes. *Potomac Elec. Power Co. v. Rudolph* (58 App. D. C. 261, 29 Fed. (2d) 634, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

#### Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

##### Sec.

44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Sinking fund.

§ 44-301 [20: 1731a]. Passenger motor vehicles for hire to carry insurance—Exceptions—Sinking fund.

The Public Utilities Commission of the District of Columbia is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed under paragraph (b) of section 44-2331, and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each motor vehicle to be operated a bond or bonds, policy or policies, of liability insurance or certificate of insurance in lieu thereof in a solvent and responsible surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any judgment recovered against such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or injury to any property, or both, caused in the operation, maintenance, use, or by reason of the defective construction of such motor cabs or other vehicles. Any such bond or undertaking or policy of liability insurance shall be in such form and on such terms or conditions as the Commission may direct: *Provided*, That such bond or policy may limit the liability of the surety or insurer on any one judgment to \$5,000 for bodily injuries or death and \$1,000 for damage to or destruction of property, and all judgments recovered upon claims arising out of the same subject of action to \$10,000 for bodily injuries or death and \$1,000 for damages to or destruction of property, to be apportioned ratably among the judgment creditors according to the amount of their respective judgments. Any such policy of liability insurance shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any such bond or undertaking shall be secured by a corporate surety approved by the Superintendent of Insurance of the District of Columbia. The Superintendent of Insurance of the District of Columbia shall



be empowered to make all reasonable rules and regulations relating to the writing of taxicab insurance and shall be empowered to govern the maximum rates to be charged on such insurance. No such bond or policy of insurance may be canceled unless not less than twenty days prior to such cancellation or termination notice of intention so to do has been filed in writing with the Commission unless cancellation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. It shall be unlawful to operate any vehicle subject to the provisions of this paragraph unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided herein. The Public Utilities Commission shall have the power to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this section.

Any owner of a public vehicle required hereby to file a bond or policy of insurance may, in lieu thereof:

(a) File with the Public Utilities Commission a blanket bond, or a blanket policy of liability insurance, in an amount to be approved by said Commission, but not to exceed \$75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying the design of any individual, association, company or corporation.

(b) Create and maintain a sinking fund in such amount as the Public Utilities Commission may require, but not in excess of \$75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official or corporation as said commission shall designate.

*Provided*, That should any such owner elect to comply with the provisions of paragraphs (a) or (b) of this section, such owner shall first file with the Public Utilities Commission an admission of liability, in conformity with the principle of respondent superior for the tortious acts of the driver or drivers of such vehicle or vehicles aforesaid as shall be driven with the trade name or identifying design of such owner.

Any cash or collateral deposit and/or any sinking fund herein provided for shall be exempt from attachment or levy for any obligation or liability of the depositor thereof, save as herein provided.

Within the meaning of this paragraph, the word "owner" shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees or receivers appointed by any court whatsoever, permitting his, their or its trade name and/or identifying design to be displayed upon vehicles governed by this section.

Any violation of this section or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than \$300 or by imprisonment for not more than ninety days, and/or cancellation of license.

This section shall become effective sixty days after final passage. (June 29, 1938, 52 Stat. 1233, ch. 809.)

#### COMPILER'S NOTE

The word "respondent" in the proviso clause probably should be "respondeat."

#### CROSS REFERENCES

General provisions concerning powers and duties of Public Utilities Commission, § 43-202.

Rules and regulations by insurance department, § 35-102.

### Chapter 4.—EMPLOYERS' LIABILITY ACT

Sec.

- 44-401. Liability of common carriers for injuries to employees.
- 44-402. Contributory negligence no bar to recovery.
- 44-403. Insurance contracts no bar to recovery.
- 44-404. Suit to be brought within one year.
- 44-405. Certain prior laws not affected.

#### § 44-401 [19: 81]. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works. (June 11, 1906, 34 Stat. 232, ch. 3073, § 1.)

#### COMPILER'S NOTE

This act was supplemented by act April 22, 1908, ch. 149, 35 Stat. 65, entitled "An act relating to the liability of common carriers by railroad to their employees in certain cases."

#### CROSS REFERENCES

Actions for wrongful death in general, §§ 16-1201 to 16-1203.

Longshoremen's and Harbor Workers' Compensation Act, § 38-501.

#### STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

#### CITED

*United States v. Chicago, M. & P. S. R. Co.* ((D. C. Idaho), 218 Fed. 701.)

### NOTES TO DECISIONS

#### IN GENERAL

Distinction between wording of this act and § 2, 34 Stat. 415. *Baltimore & O. R. Co. v. Interstate Commerce Comm.* (221 U. S. 612, 55 L. Ed. 878, 31 Sup. Ct. 621).

This act relates solely to commerce. *Southern R. Co. v. Taylor* (57 App. D. C. 21, 16 Fed. (2d) 517, cert. den. 273 U. S. 767, 71 L. Ed. 882, 47 Sup. Ct. 571).

The intent of Congress in the enactment of this statute, was plainly to create liability on the part of the carriers to their employees and to curtail a part of the defenses which were before legal. *Malloy v. Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

Act prospective in operation. *Winfree v. Northern P. R. Co.* ((C. C.-Wash.), 164 Fed. 698, affd. 173 Fed. 65, 44 L. R. A. (N. S.) 841 and 227 U. S. 296, 57 L. Ed. 518, 33 Sup. Ct. 273).



This case distinguishes the extent of liability under this act and that of the act of 1908 (U. S. Comp. St. Supp., p. 1148). *Taylor v. Southern R. Co.* ((C. C.-Ga.), 178 Fed. 380).

#### ASSUMPTION OF RISK

This act is so far as assumption of risk is concerned, as applied to the District of Columbia is superseded by section 4 of the act of April 22, 1908. *Washington Terminal Co. v. Sampson* (53 App. D. C. 179, 289 Fed. 577).

Assumed risk. *Malloy v. Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

#### COMPARATIVE NEGLIGENCE

Comparative negligence. *Missouri Pac. R. Co. v. Castle* ((C. C. A. 8), 172 Fed. 841).

#### CONSTITUTIONALITY

Act held unconstitutional in part. *Howard v. Illinois Cent. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141).

Constitutionality. *Howard v. Illinois C. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141); *Philadelphia, B. & W. R. Co. v. Schubert* (224 U. S. 603, 56 L. Ed. 911, 32 Sup. Ct. 589); *Chicago, I. & L. R. Co. v. Hackett* (228 U. S. 559, 57 L. Ed. 966, 33 Sup. Ct. 581); *Pedersen v. Delaware, L. & W. R. Co.* (229 U. S. 146, 57 L. Ed. 1125, 33 Sup. Ct. 648); *Howard v. Illinois Cent. R. Co.* ((C. C.-Tenn.), 148 Fed. 997); *Hall v. Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564); *Spain v. St. Louis & S. F. R. Co.* ((C. C.-Ark.), 151 Fed. 522); *Lancer v. Anchor Line* ((D. C.-N. Y.), 155 Fed. 433); *Smeltzer v. St. Louis & S. F. R. Co.* ((C. C.-Ark.), 158 Fed. 649); *United States v. Southern R. Co.* ((D. C.-Ala.), 164 Fed. 347); *Oregon R. & N. Co. v. Campbell* ((C. C.-Ore.), 177 Fed. 318); *Chicago, M. & St. P. R. Co. v. Westby* ((C. C. A. 8), 178 Fed. 619); *Zikos v. Oregon R. & Nav. Co.* ((C. C.-Wash.), 179 Fed. 893); *McCabe v. Atchison, T. & S. F. R. Co.* ((C. C. A. 8), 186 Fed. 966); *St. Louis, I. M. & S. R. Co. v. Conley* ((C. C. A. 8), 187 Fed. 949); *United States v. St. Louis, S. W. R. Co.* ((D. C.-Tex.), 189 Fed. 954); *Cain v. Southern R. Co.* ((C. C.-Tenn.), 199 Fed. 211).

Constitutional so far as relates to District of Columbia and Territories, in which places section supersedes prior territorial legislation. *El Paso & N. E. R. Co. v. Gutierrez* (215 U. S. 87, 54 L. Ed. 106, 30 Sup. Ct. 21); *Butts v. Merchants & Miners Transp. Co.* (230 U. S. 126, 57 L. Ed. 1422, 33 Sup. Ct. 964); *Southern Pac. Co. v. McGinnis* ((C. C. A. 5), 174 Fed. 649).

Act is valid in District of Columbia and Territories. *El Paso & N. E. R. Co. v. Gutierrez* (215 U. S. 87, 54 L. Ed. 106, 30 Sup. Ct. 21); *Pawnee* ((D. C.-Mich.), 205 Fed. 333); *Friday v. Santa Fe Cent. R. Co.* (16 N. Mex. 434, 120 Pac. 316, affd. 232 U. S. 694, 58 L. Ed. 802, 34 Sup. Ct. 468); *Gutierrez v. El Paso & N. E. R. Co.* (102 Tex. 378, 117 S. W. 426); *Atchison, T. & S. F. R. Co. v. Pickens* (Tex. Civ. App.), 118 S. W. 1133); *Missouri, K. & T. R. Co. v. Poole* ((Tex. Civ. App.), 123 S. W. 1176); *Missouri, K. & T. R. Co. v. Rogers* ((Tex. Civ. App.), 128 S. W. 710); *Atchison, T. & S. F. R. Co. v. Tack* ((Tex. Civ. App.), 130 S. W. 596). *Contra, Atchison, T. & S. F. R. Co. v. Mills* (49 Tex. Civ. App. 349, 108 S. W. 480).

Statute applicable locally in District of Columbia, though unconstitutional as to the States. *Washington, A. & Mt. V. R. Co. v. Downey* (236 U. S. 190, 59 L. Ed. 533, 35 Sup. Ct. 406).

#### ELEVATOR IN OFFICE BUILDING

Railroad company operating elevator in office building held not a "common carrier." *Southern R. Co. v. Taylor* (57 App. D. C. 21, 16 Fed. (2d) 517, cert. den. 273 U. S. 767, 71 L. Ed. 882, 47 Sup. Ct. 571).

#### INSURANCE CONTRACTS

Insurance contracts as a defense. *Philadelphia, B. & W. R. Co. v. Schubert* (224 U. S. 603, 56 L. Ed. 911, 32 Sup. Ct. 589).

#### INTERSTATE COMMERCE

"Interstate" and "intrastate" commerce. *Hall v. Louisville & N. R. Co.* ((C. C.-Fla.), 157 Fed. 464).

The question of the creation of right of action, by State of by Federal act, depends on whether the carrier is engaged in interstate or intrastate commerce. *Hall v. Louisville & N. R. Co.* ((C. C.-Fla.), 157 Fed. 464).

#### NOT REPEALED BY EMPLOYERS' LIABILITY ACT

Insofar as it applies to the District of Columbia and the Territories this act was not repealed by the Employers' Liability Act of April 22, 1908, 35 Stat. 65, ch. 149. *Walsh v. Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

#### PERSONAL REPRESENTATIVES

Right of action to personal representatives. *Winfree v. Northern Pac. R. Co.* ((C. C. A. 9), 173 Fed. 65, 44 L. R. A. (N. S.) 841, affd. 227 U. S. 296, 57 L. Ed. 518, 38 Sup. Ct. 273).

#### TERRITORIES

United States District Court in Territory of New Mexico had jurisdiction of cases arising under this act. *Santa Fe Cent. R. Co. v. Friday* (232 U. S. 694, 58 L. Ed. 802, 34 Sup. Ct. 468, affg. 16 N. Mex. 434, 120 Pac. 316).

Unconstitutional as applied to Oklahoma. *Chicago, R. I. & P. R. Co. v. Holliday* (45 Okla. 536, 145 Pac. 786).

#### VESSELS

Not applicable to marine torts within admiralty jurisdiction. *Alaska S. S. Co. v. McHugh* (268 U. S. 23, 69 L. Ed. 825, 45 Sup. Ct. 396).

This act does not have the same effect as regards ship owners engaged in coastwise trade in Alaska as it does in the District of Columbia. *Alaska S. S. Co. v. McHugh* (268 U. S. 23, 69 L. Ed. 825, 45 Sup. Ct. 396).

Act does not apply to vessels generally. *Pawnee* ((D. C.-Mich.), 205 Fed. 333).

Applies to action for death of sailor from injuries received on vessel used as common carrier in Alaska. *Sandstrom v. Pacific S. S. Co.* ((C. C. A. 9), 260 Fed. 661).

This act (June 11, 1906), where territorially applicable, embraces carriers by water and modifies or repeals inconsistent admiralty or maritime laws. *Walsh v. Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

This act (June 11, 1906), applies to the case of a seaman, employed on a vessel engaged in commerce within the Territory of Alaska and between ports thereof and of the State of Washington, who was injured while unloading a cargo at an Alaskan port. *Walsh v. Alaska S. S. Co.* (101 Wash. 295, 172 Pac. 269).

§ 44-402 [19: 82]. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury. (June 11, 1906, 34 Stat. 232, ch. 3073, § 2.)

#### STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

#### NOTES TO DECISIONS

##### CONSTITUTIONALITY

Constitutionality. *Howard v. Illinois C. R. Co.* (207 U. S. 463, 52 L. Ed. 297, 28 Sup. Ct. 141); *Brooks v. Southern Pac. Co.* ((C. C.-Ky.), 148 Fed. 986); *Snead v. Central of Georgia R. Co.* ((C. C.-Ga.), 151 Fed. 608); *Plummer v. Northern Pac. R. Co.* ((C. C.-Wash.), 152 Fed. 206); *Kelley v. Great Northern R. Co.* ((C. C.-Minn.), 152 Fed. 211).

##### CONTRIBUTORY NEGLIGENCE

Contributory negligence and assumed risk. *Powell v. Wisconsin Cent. R. Co.* ((C. C. A. 8), 159 Fed. 864).

One is liable for negligence proximately causing the injury, regardless of contributory negligence. *Atchison, T. & S. F. R. Co. v. Mills* (53 Tex. Civ. App. 359, 116 S. W. 852).



## INTERSTATE COMMERCE

"Interstate" and "intrastate" commerce. *Hall v. Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564).

§ 44-403 [19: 83]. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative. (June 11, 1906, 34 Stat. 232, ch. 3073, § 3.)

## STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

## NOTES TO DECISIONS

## IN GENERAL

Act prospective in operation. *Hall v. Chicago, R. I. & P. R. Co.* ((C. C.-Iowa), 149 Fed. 564).

## RISK

Assumed risk. *Malloy v. Northern Pac. R. Co.* ((C. C.-Wash.), 151 Fed. 1019).

§ 44-404 [19: 84]. Suit to be brought within one year.

No action shall be maintained under sections 44-401 to 44-405, inclusive, unless commenced within one year from the time the cause of action accrued. (June 11, 1906, 34 Stat. 232, ch. 3073, § 4.)

## STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.

## NOTES TO DECISIONS

## LIMITATION

Limitation fixed by this act governs action against traction company operating in District of Columbia. *Mangum v. Capital Trac. Co.* (59 App. D. C. 241, 39 Fed. (2d) 286).

Time limit for action. *Winfree v. Northern Pac. R. Co.* ((C. C. A. 9), 173 Fed. 65, 44 L. R. A. (N. S.), 841, affd. 227 U. S. 296, 57 L. Ed. 518, 33 Sup. Ct. 273).

Action for death is barred after one year from date of death. *Sandstrom v. Pacific S. S. Co.* ((C. C. A. 9), 260 Fed. 661).

§ 44-405 [19: 85]. Certain prior laws not affected.

Nothing in sections 44-401 to 44-404, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903. (June 11, 1906, 34 Stat. 233, ch. 3073, § 5.)

## STATUTORY REFERENCE

See U. S. C., title 45, § 51 et seq.



## TITLE 45.—REAL PROPERTY

Chap.

1. Conveyable estates and methods of conveyance .....	Sec. 45-101
2. Interpretation of instruments.....	45-201
3. Forms—Covenants and warranties.....	45-301
4. Acknowledgments .....	45-401
5. Effective date and recording of deeds....	45-501
6. Mortgages and deeds of trust.....	45-601
7. Recorder of Deeds .....	45-701
8. Estates in land.....	45-801
9. Landlord and tenant.....	45-901
10. Powers .....	45-1001
11. Sale of contingent and limited interests....	45-1101
12. Uses and trusts.....	45-1201
13. Waste .....	45-1301
14. Real Estate and Business Brokers' License Act.....	45-1401
15. Ownership by aliens.....	45-1501

### Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

Sec.

45-101. Present, future, vested, and contingent interests conveyed by deed or will.
45-102. Perpetuities—Excepting charitable uses.
45-103. Chattels real.
45-104. Estates created by deed or will.
45-105. Conveyance of land held adversely.
45-106. Conveyance of term in excess of one year must be by deed or will.

§ 45-101 [25: 111]. Present, future, vested, and contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 512; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the words "at common law" which came after "would be good as."

#### CROSS REFERENCES

Conveyance or incumbrance by husband of property acquired after insanity or absence of seven years of wife, § 18-204.

Release of dower by wife under eighteen years of age, § 30-216.

Release of dower of a person non compos mentis, § 21-301.

Statute of frauds, §§ 12-301, 12-303.

#### NOTES TO DECISIONS

##### PERMANENCE

Once title vests, it stays vested until it passes by grant, by descent, by adverse possession or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. *Faulks v. Schrider* (69 App. D. C. 137, 99 Fed. (2d) 370).

§ 45-102 [25: 112]. Perpetuities—Excepting charitable uses.

Except in the case of gifts or devises to charitable uses, every future estate, whether of freehold or leasehold, whether by way of remainder or without a precedent estate, and whether vested or contingent, shall be void in its creation which shall suspend, or may by possibility suspend, the power of absolute alienation of the property, so that there shall be no person or persons in being by whom an absolute fee in the same, in possession, can be conveyed, for a longer period than during the continuance of not more than one or more lives in being and twenty-one years thereafter. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1023.)

#### NOTES TO DECISIONS

##### IN GENERAL

Rule against perpetuities held inapplicable. *Hopkins v. Grimshaw* (165 U. S. 342, 41 L. Ed. 739, 17 Sup. Ct. 401).

The provisions of this section are made applicable to personalty as well as realty by § 45-823. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

##### AGREEMENT OF PARTIES

A decree affecting rights under will will be reversed on agreement of parties to enter decree in accordance with agreement. *McDonald v. Maxwell* (56 App. D. C. 287, 12 Fed. (2d) 822).

##### ALIENATION OF ACCUMULATIONS

There is in the District of Columbia no specific statutory limitation upon restraint on alienation of accumulations. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

The common law, insofar as it permits accumulation of income from a testamentary trust which is to terminate with the death of the testator's two nieces, involving the accumulation of a huge sum of money for a period probably in excess of sixty years, is obsolete and repugnant to our conditions, and therefore not applicable in the District of Columbia. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

##### ALTERNATIVE CONTINGENCY

If the testator distinctly makes his gift over to depend upon what is sometimes called an alternative contingency, or upon either of two contingencies, one of which may be too remote and the other cannot be, its validity depends upon the event. *Wills v. Maddox* (45 App. D. C. 128, cert. den. 240 U. S. 640, 61 L. Ed. 541, 37 Sup. Ct. 113).

##### "CHARITABLE TRUST" DEFINED

One of the distinguishing elements of a charitable trust is the indefiniteness permitted as to beneficiaries. so that a trust to be used for assisting deserving applicants for admission to a home, who are unable to furnish necessary money, is valid. *Washington Loan & Trust Co. v. Hammond* (51 App. D. C. 260, 278 Fed. 569).

##### DEVISE TO TRUSTEES

Devise to trustees held not to create a perpetuity, that is, not to be a limitation upon the property beyond the period of a life or lives in being and twenty-one years. *Ould v. Washington Hosp.* (95 U. S. 303, 24 L. Ed. 450).

In suit involving validity of a devise of real estate to foreign cemetery association in trust, for care of lot in District of Columbia, such trust is valid by principle of comity and equity will not allow trust to fall for



want of trustee and if necessary will appoint a trustee to carry it into effect. *Iglehart v. Iglehart* (26 App. D. C. 209, affd. 204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329).

Where testator left residuary estate to trustees to invest and reinvest for 21 years after death of two nieces, to pay annuities from the income and reinvest the remainder, the trustees had at all times power to alienate, and the trust did not violate the statute relating to restraint on alienation. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

#### GIFTS TO CHARITABLE USES

"Gifts to charitable uses do not come within the purview of the law against perpetuities." *Washington Loan & Trust Co. v. Hammond* (51 App. D. C. 260, 278 Fed. 569).

#### POWER TO ALIENATE SUSPENDED

Where trustees under a will have at all times the power to alienate, the trust does not violate provisions of this section, and the possibility of suspension of the power of alienation because of infancy or disability of beneficiaries at date of distribution does not invalidate the trust, such suspension being made by law and not by the will. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

#### SECTIONS CONSTRUED

This section and § 669 (§ 27-113) can be harmonized and construed together—this section applying to cases other than those specially provided for in § 669 (§ 27-113). *Iglehart v. Iglehart* (204 U. S. 478, 51 L. Ed. 575, 27 Sup. Ct. 329, affg. 26 App. D. C. 209).

#### TRUST CREATED BY WILL

Trust created by will held void except as to one provision, as an attempt to create a perpetuity. *Landram v. Jordan* (203 U. S. 56, 51 L. Ed. 88, 27 Sup. Ct. 17, affg. 25 App. D. C. 291).

### § 45-103 [25: 113]. Chattels real.

The provisions aforesaid as to future estates shall apply to limitations of chattels real as well as to freehold estates, so that the absolute ownership of a term for years and power to dispose of the same shall not be suspended for a longer period than the absolute power of alienation in respect to a fee simple. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1024.)

### § 45-104 [25: 114]. Estates created by deed or will.

Subject to the provisions aforesaid, a freehold estate as well as a chattel real may be created by deed or will to commence at a future day, absolutely or conditionally; an estate for life may be created in a term for years and a remainder limited thereon; a remainder of freehold or for years, either vested or contingent, may be created expectant on the determination of a term for years, and a fee may be limited on a fee upon a contingency which must happen, if at all, within the period herein prescribed. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1025.)

### § 45-105 [25: 115]. Conveyance of land held adversely.

Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 513.)

### § 45-106 [25: 116]. Conveyance of term in excess of one year must be by deed or will.

No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take

effect, except by deed signed and sealed by the grantor, lessor, or declarant, or by will. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 492; June 30, 1902, 32 Stat. 531, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out at the end thereof the words "and acknowledged in the manner herein provided" and inserting in lieu thereof the words "or by will."

#### CROSS REFERENCE

Statute of frauds, § 12-301.

#### NOTES TO DECISIONS

##### ESTOPPEL

"Where one of two contracting parties has been induced or allowed to alter his position on the faith of a contract within the statute, to such an extent that it would be fraud on the part of the other party to set up its invalidity, courts of equity hold that the clear proof of the contract and of the acts of part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such as to show that they are properly referable to the parol agreement." *Kresge v. Crowley* (47 App. D. C. 13).

##### LEASES—ACKNOWLEDGMENT

Lease for rooms in office building was perfectly valid conveyance as between the parties to it, and the parties to this action, although not acknowledged as required by this section, as amended. *Munsey Trust Co. v. Alexander* (59 App. D. C. 369, 42 Fed. (2d) 604).

##### LEASES—COVENANT OF RENEWAL

Where lessor had only a life estate, the rights under the lease expired with her, and the remaindermen, by accepting rent after her death, are not estopped to defend against the covenant of renewal in the lease. *Velati v. Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

##### LEASES—NOT UNDER SEAL

Although contract for lease of office rooms was not under seal, it was entitled to specific performance, lessor having spent considerable money in remodeling and lessee having occupied for two years. *Hoffman v. F. H. Duehay, Inc.* (62 App. D. C. 206, 65 Fed. (2d) 839).

##### LEASES—TENANTS IN COMMON

A lease for eight years (with privilege of renewal) by one tenant in common is void as to the other tenants who did not sign and seal the lease. The acknowledgment of the lessor was not and could not have been as agent or attorney for her co-owners. *Velati v. Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

No amount of acquiescence by the remaining tenants could affect their rights, in the absence of power in the lessor to act as trustee for them, in the execution of the lease. *Velati v. Dante* (39 App. D. C. 372, cert. den. 227 U. S. 679, 57 L. Ed. 700, 33 Sup. Ct. 462).

## Chapter 2.—INTERPRETATION OF INSTRUMENTS

#### Sec.

- 45-201. Words of inheritance unnecessary.
- 45-202. Words "grant" or "bargain and sell" pass whole estate.
- 45-203. Remainder to heirs—Rule in Shelley's case abolished.
- 45-204. Posthumous children.
- 45-205. Die without issue or without leaving issue refers to time of death.

### § 45-201 [25: 131]. Words of inheritance unnecessary.

No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary



intention shall appear by express terms or be necessarily implied therein. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 502.)

§ 45-202 [25:132]. Words "grant" or "bargain and sell" pass whole estate.

The word "grant," and the phrase "bargain and sell," or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 503; June 30, 1902, 32 Stat. 531, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the words "of the grantor" which appeared after the words "and interest of."

§ 45-203 [25:133]. Remainder to heirs—Rule in Shelley's case abolished.

Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons, who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1027.)

#### NOTES TO DECISIONS

##### PRIOR LAW

Where death of decedent occurred in 1900, before enactment of statute, the common-law rule applied. *Noyes v. Parker* (68 App. D. C. 13, 92 Fed. (2d) 562).

§ 45-204 [25:134]. Posthumous children.

Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1028.)

##### CROSS REFERENCE

Other provisions concerning rights of posthumous children, §§ 18-103, 18-714.

#### NOTES TO DECISIONS

##### UNBORN CHILDREN

"A child en ventre sa mère is deemed to be in esse, for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig v. Rowland* (10 App. D. C. 402).

§ 45-205 [25:135]. Die without issue or without leaving issue refers to time of death.

In any deed or will of real or personal estate in the District of Columbia, executed after Mar. 3, 1901, the words "die without issue," or the words "die without leaving issue," or the words "have no issue," or other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a

contrary intention shall appear in the instrument. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 504.)

#### NOTES TO DECISIONS

##### EFFECTIVE DATE OF DEVISE OVER

Under a devise to one person in fee and in case he should die under age and without issue to another in fee, the devise over takes effect upon the death at any time of the first devisee under age and without children. *Herrell v. Herrell* (47 App. D. C. 30).

#### Chapter 3.—FORMS—COVENANTS AND WARRANTIES

##### Sec.

- 45-301. Forms of instruments.
- 45-302. Deeds of corporations—Formal requisites—Acknowledgment.
- 45-303. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.
- 45-304. General warranty.
- 45-305. Special warranty.
- 45-306. Covenant of quiet enjoyment.
- 45-307. Covenant against having incumbered land.
- 45-308. Covenant for further assurances.
- 45-309. Warranty by life tenant void as to heir.

§ 45-301 [25:141]. Forms of instruments.

The following forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the said forms. Any other form conforming to the rules herein laid down shall be sufficient:

##### FEE SIMPLE DEED

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that in consideration of (here insert consideration), I, the said \_\_\_\_\_, do grant unto (here insert grantee's name), of \_\_\_\_\_, all that (here describe the property).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

##### DEED BY HUSBAND AND WIFE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by us, \_\_\_\_\_ and \_\_\_\_\_, his wife, of \_\_\_\_\_, witnesseth, that in consideration of \_\_\_\_\_, we, the said \_\_\_\_\_ and his wife, do grant unto \_\_\_\_\_, or \_\_\_\_\_, and so forth.

Witness our hands and seals. \_\_\_\_\_ [Seal.]  
 \_\_\_\_\_ [Seal.]

##### DEED OF LIFE ESTATE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that in consideration of \_\_\_\_\_, I, the said \_\_\_\_\_, do grant unto \_\_\_\_\_, of \_\_\_\_\_, all that (here describe the property), to hold during his life and no longer.

Witness my hand and seal. \_\_\_\_\_ [Seal.]

##### DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, of \_\_\_\_\_, witnesseth, that whereas (here insert the consideration for the deed), I, the said \_\_\_\_\_, do grant unto \_\_\_\_\_, of \_\_\_\_\_, as trustee the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon).

Witness my hand and seal. \_\_\_\_\_ [Seal.]

##### FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by me, \_\_\_\_\_, trustee, of \_\_\_\_\_, witnesseth: Whereas by a decree of (here insert court) passed on the \_\_\_\_\_ day of \_\_\_\_\_, in the cause of \_\_\_\_\_ versus \_\_\_\_\_, I, the said \_\_\_\_\_, was appointed trustee to sell the land decreed to be sold, and have sold the same to \_\_\_\_\_; and said sale has been ratified by said court, and said \_\_\_\_\_ has fully paid the purchase money due on said sale; now, therefore, in consideration of the



premises, I, the said ———, do grant unto ———, of ———, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal. ———. [Seal.]

EXECUTOR'S DEED

This deed, made this ——— day of ———, in the year ———, witnesseth, that I, ———, of ———, executor of the last will of ———, late of ———, deceased, under a power in said will contained, in consideration of ———, have sold and do hereby grant to ———, of ———, all that (here describe the property).

Witness my hand and seal. ———. [Seal.]

FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this ——— day of ———, in the year ———, witnesseth that whereas I, ———, of ———, am indebted unto ———, of ———, in the sum of ———, payable ———, for which I have given to said ——— my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said ——— all that (here describe property), provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said ——— is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

—————. [Seal.]

FORM OF LEASE

This lease, made this ——— of ———, in the year ———, between ——— of ——— and ———, of ———, witnesseth that the said ——— doth lease unto the said ———, his executor, administrator, and assigns, all that (here describe the property) for the term of ——— years, beginning on the ——— day of ———, in the year ———, and ending on the ——— day of ———, in the year ———, the said ——— paying therefor the sum of ——— on the ——— day of ——— in each and every year (or month, as the case may be).

Witness our hands and seals.

—————. [Seal.]

—————. [Seal.]

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, ch. 16, subch. 5; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENTS

Act of March 3, 1901, was amended by changing the heading "Deed of live estate" so that it would read "Deed of life estate"; also by striking out the words "and so forth" and inserting in lieu thereof "(here describe the property)."

In this same section the form headed "Deed of trust to secure debts, sureties, or for other purposes" was amended by striking out the words "as trustee."

In this same section the form headed "Executor's deed" was amended by striking out the words "and so forth" and inserting in lieu thereof the words "(here describe the property)."

In this same section the form headed "Form of mortgage, with or without power of sale," was amended by striking out the words "promissory notes or bonds or other instruments" and by inserting after the word "describe," the word "obligation."

CROSS REFERENCES

Release of dower, § 30-216.

Release of dower of a person non compos mentis, § 21-301.

Sales and conveyances of public property, §§ 1-214, 9-301 et seq.

§ 45-302 [25:142]. Deeds of corporations—Formal requisites—Acknowledgment.

The deed of a corporation shall be executed by having the seal of the corporation attached and

being signed with the name of the corporation, by its president or other officer, and shall be acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 497; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "chief" and inserting in lieu thereof the word "other."

NOTES TO DECISIONS

POWER OF ATTORNEY

Deed of corporation, signed by vice president with power of attorney to act for the corporation, held valid. *Eggleston v. Wayland* (56 App. D. C. 77, 10 Fed. (2d) 642).

SEAL OF CORPORATION

Lease containing seal of corporation and signed by its vice president, held valid though not acknowledged. *Munsey Trust Co. v. Alexander* (59 App. D. C. 369, 42 Fed. (2d) 604).

§ 45-303 [25:143]. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.

When, in any deed, the word "covenant" is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 505; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

Act of March 3, 1901, began as follows: "When, in a deed conveying real estate, the words 'the said \* \* \* covenants' are used."

NOTES TO DECISIONS

SUBSEQUENT OWNERS

Similar restrictive covenants contained in deeds from the owner of a subdivision to all purchasers, inure to the benefit of the several purchasers and subsequent owners thereof. *McNeil v. Gary* (40 App. D. C. 397).

§ 45-304 [25:144]. General warranty.

A covenant by the grantor, in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 506.)

§ 45-305 [25:145]. Special warranty.

A covenant by a grantor, in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, de-



visees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 507.)

§ 45-306 [25: 146]. Covenant of quiet enjoyment.

A covenant by the grantor, in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times after Mar. 3, 1901, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 508.)

§ 45-307 [25: 147]. Covenant against having encumbered land.

A covenant by a grantor, in a deed of land, "that he has done no act to encumber said land," shall be construed to have the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or otherwise. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 509.)

§ 45-308 [25: 148]. Covenant for further assurances.

A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 510.)

§ 45-309 [25: 149]. Warranty by life tenant void as to heir.

All warranties which shall be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect, and likewise all collateral warranties, of any lands, tenements or hereditaments, by any ancestor, who has no estate of inheritance in possession in the same shall be void against the heir. (4 Ann, ch. 16, § 21, 1705; Kilty Rep., 246; Alex. Br. Stat. 662; Comp. Stat., D. C., 496, § 33.)

COMPILER'S NOTE

This section sets forth a British statute continued in force by virtue of the act of March 3, 1901 (31 Stat. 1189, ch. 854, § 1). It was obviously impossible to modernize the language of this statute.

Chapter 4.—ACKNOWLEDGMENTS

Sec.

- 45-401. Acknowledgment by attorney.
- 45-402. Acknowledgment in the District.
- 45-403. Acknowledgment out of District.
- 45-404. Acknowledgment in foreign country.
- 45-405. Acknowledgments in Guam, Samoa, and Canal Zone.
- 45-406. Acknowledgments in Philippine Islands and Puerto Rico.
- 45-407. Certain irregular acknowledgments validated.
- 45-408. Certain defective acknowledgments and executions validated.
- 45-409. Acknowledgments by married women.
- 45-410. Power of attorney by married woman.
- 45-411. Absence of acknowledgment.
- 45-412. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

§ 45-401 [25: 150]. Acknowledgment by attorney.

No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 498.)

NOTES TO DECISIONS

ENTRY INTO POSSESSION

A lease for more than one year will be valid when the tenant enters into possession and expends large sums of money, notwithstanding the invalidity of the lease under the provision of this section that no deed may be executed by attorney. *Kresge v. Crowley* (47 App. D. C. 13).

POWER OF ATTORNEY BEFORE 1901 CODE

When power of attorney was given by two persons jointly to acknowledge deed for the grantor, which power was executed by one of them only, such defective acknowledgment was corrected by acts of Congress April 20, 1838, and March 3, 1865. *Hevner v. Matthews* (4 App. D. C. 380).

Power of attorney to sell and convey land of married woman and husband and acknowledged by them was valid both by statute and common law. The Civil War did not revoke such power although principals resided in insurrectionary States. *Williams v. Paine* (7 App. D. C. 116, affd. 169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279).

§ 45-402 [25: 151]. Acknowledgment in the District.

Acknowledgment of deeds may be made in the District of Columbia before any judge of any of the courts of said District, the clerk of the District Court of the United States for the District of Columbia, or any notary public, or the recorder of deeds of said District, and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A B, a notary public (or other officer authorized) in and for the District of Columbia, do hereby certify that C D, party to a certain deed bearing date on the ----- day of -----, and hereto annexed, personally appeared before me in said District, the said C D being personally well known to me as (or proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this ---- day of -----  
A. B. [Seal.]

(Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 493; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

The 1902 amendment struck out the words "such acknowledgment" and inserted in lieu thereof the words "acknowledgment of deeds."



## NOTES TO DECISIONS

## EVIDENCE TO IMPEACH—NOTARY TAKING ACKNOWLEDGMENT

The evidence to impeach the acknowledgment to a deed for fraud must be clear and convincing. *Ford v. Ford* (27 App. D. C. 401). Quære: Whether the act of a notary in taking an acknowledgment is a judicial act or merely ministerial. See, however, *Hitz v. Jenks* (123 U. S. 297, 31 L. Ed. 156, 8 Sup. Ct. 143).

## OMISSION OF WORDS

Quære: Whether an acknowledgment is sufficient if the words "do hereby certify" as recited in the statute, are omitted. *Ohio Nat. Bank v. Berlin* (26 App. D. C. 218).

Also, as to omission of formal statement that grantor acknowledged "the same to be his act and deed." *Ohio Nat. Bank v. Berlin* (26 App. D. C. 218).

A deed is fatally defective which omits to state that the grantor was personally known to the officer or that his identity had been proved by the oath of credible witnesses, and which fails to identify the instrument by recital of its date. The recordation of an instrument so acknowledged is erroneous and of no effect as constructive notice. *Ohio Nat. Bank v. Berlin* (26 App. D. C. 218).

## PRIMA FACIE PROOF

"The true view is that the certificate of acknowledgment is prima facie proof of the facts it contains, if within the officers' range, but is open to rebuttal, between the parties, by proof of gross concurrent mistake or fraud. In favor of purchasers for valuable consideration without notice, it is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. As to all other persons it is open to dispute." *Ford v. Ford* (27 App. D. C. 401).

## § 45-403 [25: 152]. Acknowledgment out of District.

When any deed or contract under seal is to be acknowledged out of the District of Columbia, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the Supreme, District, or Territorial courts of the United States, any justice of the peace or notary public: *Provided*, That the certificate of acknowledgment aforesaid, made by any officer of the State or Territory not having a seal, shall be accompanied by the certificate of the register, clerk, or other public officer that the officer taking said acknowledgment was in fact the officer he professed to be. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 495; June 30, 1902, 32 Stat. 531, ch. 1329; Mar. 3, 1911, 36 Stat. 1167, ch. 231, §§ 289, 291.)

## AMENDMENTS

The 1902 amendment amended the Act of Mar. 3, 1901, by striking out the words "relating to land" after the word "seal" and also by striking out a second proviso which stated "that a certificate by any such register, clerk, or other public officer, in the form prescribed by the laws of the State or Territory in which such certificate is made or customarily used therein, shall be a sufficient certificate for the purposes of this section."

Act of March 3, 1911, amended Act of June 30, 1902, by striking out the word "circuit" after the word "Supreme."

## § 45-404 [25: 153]. Acknowledgment in foreign country.

Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation or consular officer, or acting consular officer of the United States, as such consular officer is described in section 51, title 22, of the Code of Laws of the United States; and when the acknowledgment is made before any other officer

than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in section 45-403. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 496; June 30, 1902, 32 Stat. 531, ch. 1329.)

## AMENDMENT

Act of March 3, 1901, was amended by changing the section numbers of the Code of Laws of the United States.

## § 45-405 [25: 154]. Acknowledgments in Guam, Samoa, and Canal Zone.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. (June 28, 1906, 34 Stat. 552, ch. 3585.)

## STATUTORY REFERENCE

This section is in U. S. C., title 48, §§ 1358, 1432.

## § 45-406 [25: 155]. Acknowledgments in Philippine Islands and Puerto Rico.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the Philippine Islands and Porto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in the Philippine Islands or in Porto Rico, as the case may be, shall be accompanied by the certificate of the executive secretary of Porto Rico, or the governor or Attorney-General of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be. (Mar. 22, 1902, 32 Stat. 83, ch. 273; Mar. 2, 1917, 39 Stat. 968, ch. 145, § 54.)

## AMENDMENT

Act of March 22, 1902, was amended by striking out the words "or any territory of the United States" after the word "Columbia" and also by changing provision from Attorney General of "Porto Rico" to "Executive-Secretary of Porto Rico."

## STATUTORY REFERENCE

This section is in U. S. C., title 48, §§ 742 and 1019.

## § 45-407 [25: 156]. Certain irregular acknowledgments validated.

All acknowledgments of deeds and other instruments of writing under seal made prior to March 3, 1879, in a foreign country, before any secretary of legation, consul, or consular officer of the United States, for lands lying in the District of Columbia,



are hereby validated and confirmed, and the same, and the records of the said deeds and instruments, if the said deeds and instruments have been recorded, are declared to be as good and effectual, in behalf of the grantees therein named, and all persons claiming through or under them, as if the said acknowledgments and records had been respectively made and recorded under the provisions of existing laws: *Provided*, That nothing in this section shall be construed to divest just rights already acquired in good faith by creditors of or purchasers from the grantors in such deeds or instruments. (Mar. 3, 1879, 20 Stat. 353, ch. 174.)

§ 45-408 [25: 157]. Certain defective acknowledgments and executions validated.

All deeds and acknowledgments recorded in the land records of the District prior to January 1, 1902, of any of the following designated classes shall, in favor of parties in actual possession, claiming under and through such deeds, be deemed and held and are declared to be of the same effect and validity to pass the fee simple or other estate intended to be conveyed, and bar dower in the real estate therein mentioned, as if such deeds had in all respects been executed, acknowledged, proved, certified, and recorded according to law, namely:

First. All deeds executed and acknowledged by married women, their husbands having signed and sealed the same, for conveying any real estate, or interest therein, situated in the District;

Second. All acknowledgments of deeds by married women, whether they executed the deed or not, for the purpose of releasing their claims to dower in the lands described therein, situated in the District, in which acknowledgments the form prescribed by law was not followed;

Third. All deeds executed and acknowledged by an attorney in fact duly appointed for conveying real estate situated in the District;

Fourth. All deeds executed and acknowledged, or only acknowledged by such attorney in fact, for conveying real estate situated in the District, as to which the acknowledgment was made before officers different from those before whom proof of the power of attorney was made, and as to which the power of attorney was proved before only one justice of the peace;

Fifth. All deeds for the purpose of conveying land situated in the District, acknowledged out of the District, before a judge of a United State court, or before two aldermen of a city, or the chief magistrate of a city, or before a notary public or other officer;

Sixth. All deeds for the purpose of conveying land situated in the District, acknowledged by an attorney in fact, duly appointed, or by an officer of a corporation, duly authorized, who acknowledged the same to be his act and deed, instead of the act and deed of the grantor or of the corporation; and

Seventh. All deeds for the purpose of conveying land situated in the District to which there was not annexed a legal certificate as to the official character of the officer or officers taking the acknowledgment. (R. S., D. C., § 459; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 515; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

The 1902 amendment added at the end of the paragraph numbered fifth the words "or other officer."

#### NOTES TO DECISIONS

##### PRIOR LAW

Under laws of Maryland, in force in the District of Columbia in 1859, it was competent for a married woman to execute with her husband a power of attorney to convey her lands therein, which, when acknowledged by her according to the statute relating to the acknowledgment by married women of deeds conveying their real property in the District, thereby became a valid and sufficient instrument to authorize the conveyance by attorney. *Williams v. Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45-409 [25: 158]. Acknowledgments by married women.

In all cases mentioned in section 45-408 the certificate of acknowledgment by a married woman made prior to April 10, 1869, must show that the acknowledgment was made "apart" or "privily" from her husband, or use some other term importing that her acknowledgment was made out of his presence, and also that she acknowledged or declared that she willingly executed or that she willingly acknowledged the deed, or that the same was her voluntary act, or to that effect. (R. S., D. C., § 460; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 516; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

The 1902 amendment inserted after the word "woman," the words "made prior to April 10, 1869."

#### CROSS REFERENCE

See note to § 45-408. *Williams v. Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45-410 [25: 159]. Power of attorney by married woman.

When the power of attorney mentioned in section 45-408 was executed by a married women, the same shall be effectual and sufficient if there is such an acknowledgment of the same as would be sufficient, under the provisions of section 45-409 to pass her estate and interest therein were she a party executing the deed of conveyance. (Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 518; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the word "is" and inserting in lieu thereof the word "was," also by striking out the words "this chapter" and inserting in lieu thereof the section numbers corresponding to those given above.

#### CROSS REFERENCE

See note to § 45-408. *Williams v. Paine* (169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279, affg. 7 App. D. C. 116).

§ 45-411 [25: 160]. Absence of acknowledgment.

No deed or conveyance of squares or lots of public land in the city of Washington, made in pursuance of law prior to January 1, 1902, by the commissioner of public buildings or any other authorized officer, shall be deemed invalid in law for the want of an acknowledgment by the commissioner or other authorized officer before such judicial officers, as deeds of real property made between individuals are required by law to be acknowledged. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 514; June 30, 1902, 32 Stat. 532, ch. 1329.)



## AMENDMENT

Act of March 3, 1901, was amended by striking out the words "to March third, eighteen hundred and sixty-three" and inserting in lieu thereof the words "to the adoption of this Code (January 1, 1902)."

§ 45-412 [25: 161]. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

In all cases of deeds executed and acknowledged prior to January 1, 1902, the Acts of Congress approved May 31, 1832 (4 Stat. 520, ch. 112), and April 20, 1838 (5 Stat. 226, ch. 57), in reference to the acknowledgment and recording of deeds of lands situated in the District, shall be taken and construed as cumulative with the Acts of Maryland on the same subject in force in the District at the passage thereof, and an acknowledgment made and certified in compliance with any one of said Acts, and before any officer authorized by either of said Acts to take an acknowledgment, whether in or out of the District, shall be good and effectual. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 520; June 30, 1902, 32 Stat. 532, ch. 1329.)

## AMENDMENT

Act of March 3, 1901, was amended by inserting before the word "the" the words "in all cases of deeds executed and acknowledged prior to the adoption of this Code (January 1, 1902)."

## Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

## Sec.

- 45-501. When deeds take effect.
- 45-502. Deed first recorded has priority.
- 45-503. Instruments not executed or acknowledged according to law not to be recorded.
- 45-504. Record of deeds as evidence.
- 45-505. Bonds and contracts.
- 45-506. Maps and plats not to be recorded.

§ 45-501 [25: 171]. When deeds take effect.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in sections 30-216, 45-106, 45-302, 45-401 to 45-404 and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds for record. (Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329.)

## COMPILER'S NOTE

In the fourth line, the 1901 code said "provided as aforesaid." The sections thereof that preceded this section were §§ 492-498 which are compiled herein as §§ 30-216, 45-106, 45-302, and 45-401 to 45-404.

## AMENDMENT

Act of March 3, 1901 (the 1901 Code) was amended by excluding after the word "effect" the words "and pass the title in the property conveyed to said person from the date of the acknowledgment, provided the same be recorded within three months from said date."

## CROSS REFERENCE

Criminal penalty for recording instrument by one who has no color of title, § 22-1302.

## NOTES TO DECISIONS

## ASSIGNMENT OF RENTS

An assignment of rents is not a transfer of an estate in the land, for the owner may transfer the rents and still retain his entire interests in the land. *Commercial Credit Co. v. Campbell* (64 App. D. C. 64, 74 Fed. (2d) 468).

## "CREDITORS," CONSTRUED

"Creditors mentioned (in this section) mean creditors who in the interval of time have fastened upon the property for the payment of their debts, and not general creditors." *Crosby v. Ridout* (27 App. D. C. 481).

## CREDITORS HAVING ACTUAL NOTICE

The delivery of a deed for record is not a prerequisite to its validity as against creditors having actual notice of its existence. *Staples v. Warren* (46 App. D. C. 363, distinguishing *Dulany v. Morse*, 39 App. D. C. 523) (as to a conveyance constituting a preference under the bankruptcy act).

## DEED WITHHELD FROM RECORD

When deed of trust was not recorded until several weeks after the judgment of the bank was recovered, and there was no evidence that the bank ever had actual notice of its existence until after execution was issued and levied, the conveyance would be ineffectual against the bank, or any purchaser at the sale under that judgment. *Hitz v. National Metropolitan Bank* (111 U. S. 722, 28 L. Ed. 577, 4 Sup. Ct. 613).

"The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title or to operate any extinguishment." *Walker v. Warner* (31 App. D. C. 76), citing *Fitzgerald v. Wynne* (1 App. D. C. 107); *Bunten v. American Security & Trust Co.* (25 App. D. C. 226).

## DELIVERY ESSENTIAL; OBJECT OF ACKNOWLEDGMENT

"The act of delivery is essential to the existence of any deed, bond, or note. Although drawn and signed, so long as it is undelivered, it is a nullity; not only does it take effect only by delivery, but also only on delivery." *Atlas Portland Cement Co. v. Fox* (49 App. D. C. 292, 265 Fed. 444, 266 Fed. 1021, quoting from *Young v. Clarendon Tp.* 132 U. S. 340, 33 L. Ed. 356, 10 Sup. Ct. 107). "The statute is merely one of notice. As stated by Chief Justice Alvey, in *Fitzgerald v. Wynne* (1 App. D. C. 107): 'The great object of the statutes in requiring deeds of conveyance to be acknowledged and recorded is to prevent the practice of fraud upon creditors and purchasers—to furnish the means of notice and protection to innocent third parties.' To prevent fraud and furnish notice when? At the time the credit is extended or the claim reduced to judgment, on the strength of the debtor's apparent title. Not before the title was acquired, but during its record existence."

## GENERAL INTENT OF REGISTRY

General intent of the statutes of registry is to protect innocent persons against prejudice from secret conveyances, by providing means through which they can know the condition of titles; that where they acquire such knowledge by means other than registry, they do not stand in need of such protection, and do not, as a general rule, come within the purview of the statutes; and that the statutes will be so construed unless their terms exclude such construction. *Manogue v. Bryant* (15 App. D. C. 245).

## ILLEGAL RECORDING

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark v. Harmer* (5 App. D. C. 114).

## JUDGMENT CREDITORS

"Judgment creditors" are within meaning of the statute, but this applies only to cases where the credit has been extended or judgments have been secured while the record title remained in the debtor. *Atlas Portland Cement v. Fox* (49 App. D. C. 292, 265 Fed. 444; for dissenting opinion, see 266 Fed. 1021).



## JUDGMENT LIENS

Judgment liens extend to all lands "held under apparently perfect legal title by the judgment debtor at the time of the rendition of the judgment, notwithstanding the same might be subject to some secret trust, capable of being placed upon record." *American Sav. Bank v. Eisminger* (35 App. D. C. 51).

## NOTICE NOT REQUIRED

"One is not required to take notice of everything which is put upon the records of the Land Office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or his procurement, can legally affect those rights." *Armstrong v. Ashley* (22 App. D. C. 368, *affd.* 204 U. S. 272, 51 L. Ed. 482, 27 Sup. Ct. 270).

## NOTICE OF PRIOR EQUITY

"A purchaser with notice of a prior equity superior to the rights of his grantor takes his place and is bound to do that which in equity his grantor was bound to do." *Kresge v. Crowley* (47 App. D. C. 13).

## NOTICE REQUIRED

"One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it." *Armstrong v. Ashley* (22 App. D. C. 368, *affd.* 204 U. S. 272, 51 L. Ed. 482, 27 Sup. Ct. 270). See also *Sis v. Boarman* (11 App. D. C. 116).

## PARTICULAR FORM NOT REQUIRED

"No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery." *Walker v. Warner* (31 App. D. C. 76).

## POSSESSION PRIMA FACIE EVIDENCE

Possession by the grantee is prima facie evidence of delivery. *Walker v. Warner* (31 App. D. C. 76). See also, *Carusi v. Savary* (6 App. D. C. 330).

## PRIORITY OF JUDGMENT CREDITOR

A judgment creditor who files a bill in equity to sell the equitable interest of the judgment debtor in real property, has priority over a grantee claiming under a deed executed before (but not filed for record until after) the filing of the bill. *Ohio Nat. Bank v. Berlin* (26 App. D. C. 218).

## RECORDING AS TO THIRD PARTIES

"The requirement consists in the duty imposed upon the grantee to record, or suffer the penalty prescribed \* \* \* of having the instrument \* \* \* declared a nullity. \* \* \* Though optional with the grantee as to certain parties as to innocent purchasers and creditors it is required for his protection." *Dulany v. Morse* (39 App. D. C. 523).

## RECORDING OF TRUST DEED FROM STRANGER

Recordation of deed of trust from a stranger to the record title is not constructive notice that the grantor is the grantee of last record owner. *Crosby v. Ridout* (27 App. D. C. 481).

## SUPERIOR EQUITIES OF PRIOR SPECIFIC LIEN

"A judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien \* \* \*. The judgment creditor stands in the place of his debtor, and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment." *Crosby v. Ridout* (27 App. D. C. 481).

## SUPERSEDING PRIOR ACT

This section superseded prior recording act and applies to all instruments unrecorded at time of its passage. *Dulany v. Morse* (39 App. D. C. 523).

## TRUSTEE IN BANKRUPTCY

Trustee in bankruptcy does not, under our recording statutes, take the property as an innocent purchaser, but "subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which

existed against the property in the hands of the bankrupt." *Crosby v. Ridout* (27 App. D. C. 481).

## UNEXPRESSED CONDITION

"A deed cannot be delivered to the grantee upon a condition not expressed in the instrument." *Walker v. Warner* (31 App. D. C. 76), citing *Newman v. Baker* (10 App. D. C. 197); *Bieber v. Gans* (24 App. D. C. 517).

§ 45-502 [25: 172]. Deed first recorded has priority.

When two or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 500.)

§ 45-503 [25: 173]. Instruments not executed or acknowledged according to law not to be recorded.

The recorder shall not accept for record or record any instrument which shall not be executed and acknowledged agreeably to law by the person or party therein granting or contracting with respect to his right, title, or interest in the land therein described. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 555; June 30, 1902, 32 Stat. 533, ch. 1329.)

## AMENDMENT

Act of March 3, 1901, was amended by striking out the ending which stated that "and the knowledge by any person of the fact of such record shall not be either constructive or actual notice of the existence of such instrument."

## NOTES TO DECISIONS

## ILLEGAL RECORDING

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark v. Harmer* (5 App. D. C. 114).

## INSTRUMENTS TO BE RECORDED

"He is by law required to receive and file, or receive and record \* \* \* such instruments as have been duly executed, and which purport on their face to be of the nature of instruments entitled to be filed or recorded." *Dancy v. Clark* (24 App. D. C. 487).

## MANDAMUS TO COMPEL RECORDATION

Use of mandamus to compel recordation. *Dancy v. Clark* (24 App. D. C. 487).

## VALIDITY OF INSTRUMENTS

Recorder has no jurisdiction to pass on validity of instruments presented for record. *Dancy v. Clark* (24 App. D. C. 487).

§ 45-504 [25: 174]. Record of deeds as evidence.

The record or a copy thereof of any deed recorded, as mentioned in sections 45-408 and 45-409, shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 519; June 30, 1902, 32 Stat. 532, ch. 1329.)

## AMENDMENT

Act of March 3, 1901, was amended by striking out the word "and" and substituting the word "or" so that it shall read "the record or a copy."

## CROSS REFERENCE

Introduction into evidence, §§ 14-401, 14-402.

§ 45-505 [25: 175]. Bonds and contracts.

Any title bond or other written contract in relation to land may be acknowledged, certified, and



recorded in the same manner and with like effect as to notice as deeds for the conveyance of land. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 501; June 30, 1902, 32 Stat. 531, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the words "as deeds for the conveyance of land" which followed the word "manner."

§ 45-506 [25: 176]. Maps and plats not to be recorded.

It shall not be lawful for any person or persons to record any map or plat of the subdivision of land in the District of Columbia in the office of the recorder of deeds for said District, whether such map or plat be attached to a deed or other document or is offered separately for record. (Aug. 24, 1894, 28 Stat. 501, ch. 329.)

#### CROSS REFERENCE

Maps and plats recorded in surveyor's office, § 1-605 et seq.

### Chapter 6.—MORTGAGES AND DEEDS OF TRUST

#### Sec.

- 45-601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.
- 45-602. How to be recorded.
- 45-603. Estate of mortgagee or trustee conveyed.
- 45-604. Survival of title.
- 45-605. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.
- 45-606. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.
- 45-607. Foreclosure—Exceptions to payment into court.
- 45-608. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.
- 45-609. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.
- 45-610. Mortgagee may redeem prior mortgage.
- 45-611. Appointment of trustee to sell in event of death of mortgagee or trustee.
- 45-612. Defenses against foreclosure.
- 45-613. Replacement of deceased trustee.
- 45-614. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause.
- 45-615. Terms of sale.
- 45-616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.
- 45-617. Creditor buying.
- 45-618. Expenses and commissions.
- 45-619. Release after death of mortgagee or trustee.
- 45-620. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

§ 45-601 [25: 191]. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, read as follows: "Mortgages and deeds of trust to secure debts, conveying any estate in land, in order to be effectual, shall be executed and recorded in the same manner as absolute deeds; and they shall take effect and pass title to the property conveyed, both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds."

#### CROSS REFERENCE

Statute of frauds, §§ 12-301, 12-303.

#### NOTES TO DECISIONS

Deed declared a mortgage. *Dulany v. Morse* (39 App. D. C. 523).

§ 45-602 [25: 192]. How to be recorded.

It shall be the duty of the recorder of deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the ending which stated "and, after each mortgage, to leave a blank space wherein may be recorded any assignment or release of said mortgage."

§ 45-603 [25: 193]. Estate of mortgagee or trustee conveyed.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by judicial decree for the causes hereinafter mentioned: *Provided*, That nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee-simple under a deed made by the mortgagee or trustee in pursuance of the powers conferred by the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by adding proviso.

#### CROSS REFERENCE

Removal of trustee, see § 45-614.

#### NOTES TO DECISIONS

##### MORTGAGEE OUT OF POSSESSION

Mortgagee out of possession has no such interest as will permit him to have partition; "much less is the beneficiary under a deed of trust entitled to have partition; for he has no estate whatever, and no possibility even of a right of possession. Nor has the trustee in the deed any such right \* \* \*." *Sis v. Boarman* (11 App. D. C. 116).

##### POWERS AND DUTIES OF TRUSTEES

Powers and duties of trustees in deeds of trust as to time of sale and price of property are more restricted than trustees for distribution and partition, and the duties of the first type of trustees are measured by the deed of trust. *Anderson v. White* (2 App. D. C. 408).

Powers and duties of trustees are measured by terms of instrument appointing them, and they do not have the same discretion in exercise of duties as other trustees. *Wheeler v. McBlair* (5 App. D. C. 375, affd. 172 U. S. 643, 43 L. Ed. 1182, 19 Sup. Ct. 882).

##### RECOVERY OF POSSESSION BY MORTGAGEE

Mortgagee and mortgagor do not stand in relation of landlord and tenant, and mortgagee, after default, may



not recover possession under Landlord and Tenant Act of the District, but must bring ejectment or foreclosure. *Willis v. Eastern Trust & Banking Co.* (169 U. S. 295, 42 L. Ed. 752, 18 Sup. Ct. 347).

#### SALE OF MORTGAGED REALTY

A proposed contract of sale of mortgaged realty, in good faith, and in which mortgagor will participate, does not violate this section. *Pearson v. Small* (65 App. D. C. 243, 82 Fed. (2d) 849).

#### TRUSTEE HOLDS LEGAL TITLE

Trustee holds legal title and a deed by it conveyed whatever title it had. *Chesapeake Beach R. Co. v. Washington, P. & C. R. Co.* (199 U. S. 247, 50 L. Ed. 175, 26 Sup. Ct. 25), affg. (23 App. D. C. 587).

"The estate of the trustee is a naked legal title without any beneficial interest whatever \* \* \* and they have always held the legal title in strict subordination to the beneficial interest of the debtor and creditor in the transaction." *Marshall v. Kraak* (23 App. D. C. 129).

#### TRUSTEES SALES FOR PARTITION OR DISTRIBUTION

In making a sale the trustee must not place himself in a position where his personal interest conflicts with his duty. *Jackson v. Smith* (254 U. S. 586, 65 L. Ed. 418, 40 Sup. Ct. 10, revg. 48 App. D. C. 565).

Difference between rule applicable to cases of sales by trustees for partition or distribution and sales under ordinary trust to secure loans and enforceable upon stipulated terms. In the former, interests of the beneficiaries are identical, and trustee is charged with absolute duty to arrange and conduct sale; in the latter it is duty of trustee to conduct sale in manner and upon notice prescribed in the trust. *Smith v. Jackson* (48 App. D. C. 565, revd. on other grounds, 254 U. S. 586, 65 L. Ed. 418, 40 Sup. Ct. 10).

Sale by a trustee substituted for the survivor of two trustees, who refused to act, is valid, without there being a substitute for the deceased trustee. *Stokes v. Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

#### § 45-604 [25: 194]. Survival of title.

Whenever a mortgage or deed of trust to secure a debt is executed to two or more mortgagees or trustees in fee simple, upon the death of any one or more of them the legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533.)

#### NOTES TO DECISIONS

##### SUBSTITUTED TRUSTEE

The wording indicates no intention that a trustee should be substituted for each of the original Trustees, where there are more than one, but only for the surviving trustee. *Stokes v. Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

§ 45-605 [25: 195]. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to

redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint. (7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D. C., p. 395, § 1.)

#### CROSS REFERENCES

Payments into court, §§ 16-1401 to 16-1403 and notes. See note to § 45-309.

§ 45-606 [25: 196]. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgage, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments,



aments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit. (7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat. D. C., p. 396, § 2.)

#### RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

#### § 45-607 [25:197]. Foreclosure — Exceptions to payment.

Sections 45-605, 45-606 or any thing therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer. (7 Geo. 2, ch. 20, § 3, 1734; Kilty's Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D. C., p. 397, § 3.)

#### § 45-608 [25:198]. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.

It shall and may be lawful to and for any person or persons, under the age of one and twenty years, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infants or infant were, at the time of making such conveyance, or assurance, of the full

age of one and twenty years. (7 Ann. ch. 19, § 1, 1703; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp. Stat., D. C., p. 79, § 13.)

#### § 45-609 [25:199]. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust, estates, or mortgages. (7 Ann. ch. 19, § 2, 1708; Kilty's Rep. 247; Alex. Br. Stat. 680; Comp. Stat. D. C., p. 79, § 14.)

#### § 45-610 [25:200]. Mortgagee may redeem prior mortgage.

If it so happen there be more than one mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; any thing therein contained to the contrary thereof in any wise notwithstanding. (4 and 5 W. and M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D. C. 237, § 26.)

#### § 45-611 [25:201]. Appointment of trustee to sell in event of death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the District Court of the United States for the District of Columbia, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court



may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by inserting after the words "heirs at law" the words "or devisees."

#### RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2.

#### CITED

*Taylor v. Drury* (56 App. D. C. 266, 12 Fed. (2d) 489).

#### NOTES TO DECISIONS

##### IN GENERAL

Quaere: Whether this section and § 538 of the Code (§ 45-614) were intended to supersede the former course of procedure in equity for the removal and appointment of trustees. *Marshall v. Kraak* (23 App. D. C. 129).

##### NEW TRUSTEES APPOINTED

Where trustees appointed under deed of trust died, new trustees were appointed to execute the trusts, and were invested with all the powers which had been conveyed to the deceased trustees. *Dawson v. Taylor* (55 App. D. C. 237, 4 Fed. (2d) 430).

##### NO PROVISION REQUIRING NOTICE

The statute does not contain a provision requiring notice, actual or constructive, to all parties in interest. *Totten v. Harlowe* (66 App. D. C. 373, 88 Fed. (2d) 755).

##### PUBLICATION UPON ABSCONDING TRUSTEE

Publication need not be had upon an absconding trustee, whose whereabouts is unknown. *Marshall v. Kraak* (23 App. D. C. 129).

##### TRUSTEES' REFUSAL TO PERFORM

Trustees' "refusal or disability to perform the trust is the equivalent in equity of a renunciation of the legal estate." *Marshall v. Kraak* (23 App. D. C. 129).

#### § 45-612 [25: 202]. Defenses against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535.)

#### NOTES TO DECISIONS

##### FORECLOSURE

Foreclosure may be had by proceeding in equity, without calling on trustees to sell under power of sale in deed of trust. *Utermehle v. McGreal* (1 App. D. C. 359, revd. on other grounds, 167 U. S. 688, 42 L. Ed. 326, 17 Sup. Ct. 961).

On petition by holder of note secured by mortgage to participate in proceeds of sale of mortgaged property in foreclosure proceedings instituted by holder of other note, the bar of limitation, or lapse of time, does not apply as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley v. Eyster* (9 App. D. C. 373).

##### LIMITATIONS OR LACHES

Upon the ground of lapse of time alone, there is no room for the joint application of the statute of limitations and the doctrine of laches where they would conflict with each other, and the equitable doctrine would have the effect of reducing the statutory period of limitations. *Sis v. Boarman* (11 App. D. C. 116).

#### § 45-613 [25: 203]. Replacement of deceased trustee.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in section 45-611 may be had to appoint a successor to him in the said trusts. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536.)

#### § 45-614 [25: 204]. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause.

In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in sections 45-611 and 45-619 of this title: *Provided*, That any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the words "said trust being executed" and also by striking out at the end of said section the words "well as upon the parties interested in the trust, if he and they can be found within the said District" and inserting in lieu thereof the words "provided in said sections."

#### CITED

*Lee v. Mitcham* (69 App. D. C. 17, 98 Fed. (2d) 298, 117 A. L. R. 1427).

#### NOTES TO DECISIONS

##### DISCRETION OF COURT

Where deed of trust named first and second successor trustees, one of whom was in jail and the other awaiting trial, the court could in its reasonable discretion appoint a new trustee. *Wright v. Pitts* (62 App. D. C. 217, 66 Fed. (2d) 197).

##### EFFECT OF ORDER

Appointment of substitute trustee—conclusiveness of order. *Bowen v. Mount Vernon Sav. Bank* (66 App. D. C. 139, 85 Fed. (2d) 396).

##### PARTY INTERESTED

Where holder of one of 490 notes brings suit to procure substitution of trustees, it was not necessary to have a class or representative suit. *Totten v. Harlowe* (66 App. D. C. 373, 88 Fed. (2d) 755).

#### § 45-615 [25: 205]. Terms of sale.

If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329.)



## AMENDMENT

Act of March 3, 1901, was amended by striking out at the end thereof the words "which terms shall be such as to secure to the creditor the payment of his debt in cash as nearly as may be consistent with justice; and the determination of the court in the premises shall be binding on all parties in interest."

## NOTES TO DECISIONS

## JUDICIAL SALE DISTINGUISHED

Where trustee appointed by the court to succeed surviving trustee who refused to serve made a sale, such sale was not a judicial sale within meaning of Judicial Sales Act (U. S. C., title 28, §§ 847-849), but a sale in accordance with the terms of the trust and the question of notice is governed by this section. *Stokes v. Hinden* (66 App. D. C. 34, 85 Fed. (2d) 200).

§ 45-616 [25: 206]. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale: *Provided*, That the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95.)

## NOTES TO DECISIONS

## JUDICIAL SALE DISTINGUISHED

Where trustee under deed of trust obtained leave of court in receivership proceeding to sell real estate, such sale did not constitute a judicial sale. *Huffines v. American Security & Trust Co.* (63 App. D. C. 224, 71 Fed. (2d) 345).

## PRIOR LAW

Prior to enactment of this act, R. S. § 803 applied to foreclosure of mortgages in the District of Columbia. *Dodge v. Freedman's Sav. & Trust Co.* (106 U. S. 445, 27 L. Ed. 206, 1 Sup. Ct. 335); *Shepherd v. Pepper* (133 U. S. 626, 33 L. Ed. 706, 10 Sup. Ct. 438).

§ 45-617 [25: 207]. Creditor buying.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544.)

## NOTES TO DECISIONS

## CREDITOR AS PURCHASER

When the creditor becomes a purchaser at the sale, he is entitled to credit the amount of the purchase money to the debt. *Orlove v. National Sav. & Trust Co.* (68 App. D. C. 387, 98 Fed. (2d) 259); *Kosters v. Hoover* (69 App. D. C. 66, 98 Fed. (2d) 595).

## LIABILITY FOR PROFITS FROM UNLAWFUL SALE

Attorneys who knowingly confederated with receiver held liable for all profits resulting from purchase at foreclosure sale and resale of property, with interest and costs. *Jackson v. Smith* (254 U. S. 586, 65 L. Ed. 413, 41 Sup. Ct. 200, revg. 48 App. D. C. 565).

§ 45-618 [25: 208]. Expenses and commissions.

Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of five per centum on the first five hundred dollars and three per centum on the balance of the purchase money actually paid by the purchaser at any sale, and one and one-half per centum on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of one per centum on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor: *Provided*, That if a sale shall actually take place under any such advertisement, he shall not be entitled to more than one such allowance in addition to his commission on the proceeds of an actual sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545.)

§ 45-619 [25: 209]. Release after death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in said District Court of the United States for the District of Columbia, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of



Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party can not be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by inserting after the word "heirs" the words "or devisees."

§ 45-620 [25: 210]. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

It shall and may be lawful to and for any person or persons, being idiot, lunatick, or non compos mentis, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons, being idiot, lunatick, or non compos mentis, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons intitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons being idiot, lunatick, or non compos mentis, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons intitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons being idiot, lunatick, or non compos mentis, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and not idiot, lunatick, or non compos mentis, or had by him, her, or themselves executed the same. All and every person and persons being idiot, lunatick, or non compos mentis, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons, being idiot, lunatick, or non compos mentis, and only such trustee or mortgagee as aforesaid, shall and may be impowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like man-

ner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages. (4 Geo. 2, ch. 10, §§ 1 and 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D. C., p. 78, § 11.)

#### Chapter 7.—RECORDER OF DEEDS

##### Sec.

- 45-701. Appointment and duties.
- 45-702. Deputy recorder—Duties.
- 45-703. Second deputy—His duties and powers.
- 45-704. Vacancy.
- 45-705. Public records to be open for inspection.
- 45-706. Typewritten records.
- 45-707. Certain records to be recopied—Expense.
- 45-708. Fees of recorder of deeds.
- 45-709. Fees and emoluments of recorder of deeds deposited with collector of taxes.
- 45-710. Estimates for annual appropriations—Building, equipment, and supplies.

§ 45-701 [25: 221]. Appointment and duties.

There shall be a recorder of deeds of the District, appointed by the President, by and with the advice and consent of the Senate, who shall record all deeds, contracts, and other instruments in writing affecting the title or ownership of any real estate or personal property in the District which shall have been duly acknowledged and certified, and who shall perform all requisite services connected therewith, and shall have charge and custody of all the records, papers, and property appertaining to his office. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 548.)

##### CROSS REFERENCE

Recording instruments relating to personal property, § 42-101 et seq.

##### RECORDER OF DEEDS, LEASE OF OFFICE SPACE

The recorder of deeds for the District of Columbia is hereby authorized to lease one additional floor in the Century Building, located at 412 Fifth Street Northwest, Washington, District of Columbia, consisting of nine rooms, for the use and occupancy of his office; and he is authorized and directed to pay for said use and occupancy, out of the fees and emoluments of his office, not to exceed \$1,500 per annum. (Mar. 4, 1923, 42 Stat. 1531, ch. 292.)

§ 45-702 [25: 222]. Deputy recorder—Duties.

The recorder of deeds is authorized to appoint a deputy recorder, and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549.)

§ 45-703 [25: 223]. Second deputy—His duties and powers.

The recorder of deeds is authorized to appoint a second deputy recorder, who may do and perform any and all acts which the recorder is authorized to do, and all such acts by the said second deputy recorder shall have the same legality, force, and effect as if performed by the recorder; the compensation of said second deputy recorder to be at the rate of \$2,000 per annum. And with the approval of the Attorney General of the United States, the recorder of deeds may from time to time fix the



number and compensation of all other employees of his office: *Provided*, That the employees of said office shall not be in excess of the number actually necessary for the proper conduct of said office of the recorder of deeds: *Provided, however*, That the compensation of the first deputy recorder of deeds and that of the second deputy recorder of deeds shall not be changed except by Act of Congress. (Mar. 3, 1925, 43 Stat. 1102, ch. 416.)

#### COMPILER'S NOTE

The act of March 2, 1927, 44 Stat. 1301, provided that for the fiscal year 1928 the personal services in the office of the recorder of deeds should be paid in accordance with the Classification Act. A similar provision for the year 1929 is contained in the act of May 21, 1928, 45 Stat. 649.

#### § 45-704 [25: 224]. Vacancy.

In case of a vacancy in the office of the recorder by death, resignation, or other cause the deputy recorder shall act until a recorder shall be duly appointed and qualified. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 550; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out proviso which stated that "no additional expense shall be incurred by the District for said deputy and no other fees shall be allowed than are now provided by law."

#### § 45-705 [25: 225]. Public records to be open for inspection.

All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the recorder of deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge. (Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556.)

#### § 45-706 [25: 226]. Typewritten records.

The recorder of deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

The recording of all instruments filed for record in the office of the recorder of deeds shall be done with book typewriter, except in those cases where, on account of the character of the work, the use of a pen shall be found by the recorder to be necessary. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 551; June 27, 1906, 34 Stat. 489, ch. 3553.)

#### AMENDMENT

Act of March 3, 1901, did not contain the second paragraph of this section.

#### § 45-707 [25: 227]. Certain records to be recopied—Expense.

The recorder of deeds of the District of Columbia is authorized and directed to recopy such of the records in his office as may, in his judgment and that of the District Court of the United States for the District of Columbia, or one of its justices appointed by

it for that purpose, need recopying in order to preserve the originals from destruction: *Provided*, That the expense thereof shall not in any one fiscal year exceed the sum of one thousand dollars certified to by the said District Court, or by one of its justices appointed by it for that purpose, and audited and allowed by the General Accounting Office. (Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

#### AMENDMENT

The 1921 act substituted "general accounting office" for "accounting officer of the Treasury."

#### § 45-708 [10: 14]. Fees of recorder of deeds.

The legal fees for the services of the recorder shall be as follows:

For filing, recording, and indexing, or for making certified copy of any instrument containing two hundred words or less, \$1, and 20 cents for each additional hundred words, to be collected at the time of filing, or when the copy is made.

For each certificate and seal, 50 cents.

For searching records extending back two years or less next preceding current date, 50 cents, and 15 cents for each additional year, to be paid by the party for whom the search may be made.

For recording a plat or survey, 20 cents for each course such survey may contain.

For recording a town plat, 25 cents for each lot such plat may contain.

For taking any acknowledgment, 50 cents.

For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels or any release or satisfaction of any such, \$1.50.

For filing and indexing any other paper required by law to be filed in his office, 50 cents.

In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of the filing of the certificate of incorporation 50 cents on each thousand dollars of the amount of capital stock of the corporation as set forth in its said certificate: *Provided, however*, That the fee so paid shall not be less than \$50: *Provided further*, That the recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10 per centum of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; June 17, 1935, 49 Stat. 384, ch. 265.)

#### AMENDMENTS

The 1905 amendment added the last paragraph.

The 1935 amendment raised the various fees and added the eighth paragraph.

#### CROSS REFERENCES

Fees for recording instruments relating to personal property, § 42-101 et seq.

Fees under Motor Vehicle Lien Law, § 40-712.

Recording fees under Money Lenders Law, § 26-605.

The last paragraph of this section does not apply to credit unions, § 26-505.



NOTES TO DECISIONS

ENTRANCE FEE

Entrance fee is not a tax, but compensation for a privilege applied for and granted, and it does not represent either property or business being done, it is immaterial that in fixing its amount no apportionment is made between the property owned or the business done within the State and that owned or done elsewhere. *Atlantic Ref. Co. v. Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

Entrance fee is not a charge laid upon interstate commerce; nor a charge furtively directed against interstate commerce, and it should apply to foreign corporations as well as domestic. *Atlantic Ref. Co. v. Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

This section does not deprive foreign corporation of its property without due process as the entrance fee is not measured by property, either within or without the jurisdiction. *Atlantic Ref. Co. v. Virginia* (302 U. S. 22, 82 L. Ed. 24, 58 Sup. Ct. 75).

§ 45-709 [25: 228]. Fees and emoluments of recorder of deeds deposited with collector of taxes.

All of the fees and emoluments of the office of recorder of deeds of the District of Columbia shall be paid at least weekly to the collector of taxes for the District of Columbia for deposit in the Treasury of the United States to the credit of the District of Columbia. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1.)

§ 45-710 [25: 229]. Estimates for annual appropriations—Building, equipment and supplies.

The annual estimates of appropriations for the government of the District of Columbia shall include estimates of appropriations for the operation and maintenance of the office of the recorder of deeds. And appropriations are hereby authorized for a suitable record building for the office of the recorder of deeds, and for personal services, rentals, office equipment, office supplies, and such other expenditures as are essential for the efficient maintenance and conduct of such office. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

Chapter 8.—ESTATES IN LAND

- Sec.
- 45-801. Estates in District.
  - 45-802. Fee simple estates—Estates tail abolished.
  - 45-803. Absolute or qualified.
  - 45-804. Freeholds—Chattels real—Chattel interests.
  - 45-805. Estates pur autre vie.
  - 45-806. Estates classified—Possession—Expectancy.
  - 45-807. Estate in possession.
  - 45-808. Estate in expectancy.
  - 45-809. Reversions.
  - 45-810. Future estates.
  - 45-811. Remainder and conditional limitation.
  - 45-812. Vested and contingent future estates.
  - 45-813. Alternative future estates.
  - 45-814. Expectant estates not to be defeated.
  - 45-815. Expectant estate descendible and alienable.
  - 45-816. Tenancies in common and joint tenancies.
  - 45-817. Coparcenary estates abolished.
  - 45-818. Estates for years.
  - 45-819. Estates from year to year.
  - 45-820. Estates by sufferance.
  - 45-821. Estates from month to month or from quarter to quarter.
  - 45-822. Estates at will—When terminated.
  - 45-823. Provisions applicable to personal property.

§ 45-801 [25: 261]. Estates in District.

Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates

at will, and estates by sufferance. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1011.)

CROSS REFERENCES

Statute of frauds, §§ 12-301, 12-303.  
See §§ 45-106 and 45-904.

§ 45-802 [25: 262]. Fee simple estates—Estates tail abolished.

All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1012.)

NOTES TO DECISIONS

FEE TAIL CONVERTED INTO FEE-SIMPLE ESTATE

Devise held to create estate tail, and, therefore, under Maryland Act of 1786, converted into fee simple. *Dengel v. Brown* (1 App. D. C. 423).

Devise held to convey fee. *Young v. Norris Peters Co.* (27 App. D. C. 140); *Atkins v. Best* (27 App. D. C. 148).

Where a will gave to the granddaughter of testatrix real property until she should marry or attain the age of twenty-one years in either of which events, whichever happened first, the property was given to the granddaughter and her children, but if the granddaughter died before she attained the full age of twenty-one years without having been married, or if she married and died without leaving a child or children, then to testatrix' son, and the daughter married at twenty-four, had a son who predeceased her, she took a fee-simple title. *Young v. Munsey Trust Co.* (72 App. D. C. 73, 111 Fed. (2d) 514).

§ 45-803 [25: 263]. Absolute or qualified.

An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1013.)

§ 45-804 [25: 264]. Freeholds—Chattels real—Chattel interests.

Estates of inheritance and estates for life shall continue to be denominated freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1014.)

§ 45-805 [25: 265]. Estates pur autre vie.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1015.)

§ 45-806 [25: 266]. Estates classified—Possession—Expectancy.

Estates are either in possession or in expectancy. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1016.)

§ 45-807 [25: 267]. Estate in possession.

An estate in possession exists when the owner has an immediate right to the possession of the land. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1017.)

§ 45-808 [25: 268]. Estate in expectancy.

An estate in expectancy is either a reversion or a future estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1018.)



## § 45-809 [25: 269]. Reversions.

A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the deviser who has devised a particular estate less than his own, and which residue returns to his or their possession on the expiration of the particular estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1019.)

## CROSS REFERENCE

See note to § 16-501. *Camp v. Boyd* (35 App. D. C. 159, affd. 229 U. S. 530, 57 L. Ed. 1317, 33 Sup. Ct. 785).

## § 45-810 [25: 270]. Future estates.

A future estate is one limited to commence at a future day, either without the intervention of a precedent estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1020.)

## § 45-811 [25: 271]. Remainder and conditional limitation.

If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1021.)

## CROSS REFERENCE

Proceeding by remainderman to determine whether or not life tenant is still alive, reentry by life tenant, §§ 16-527 to 16-531.

## § 45-812 [25: 272]. Vested and contingent future estates.

A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1022.)

## NOTES TO DECISIONS

## ADVERBS OF TIME CONSTRUED

"Adverbs of time—as where, there, after, from, etc.—in a devise of a remainder are construed to relate merely to the time of the enjoyment of the estate, and not the time of the vesting in interest." *Green v. Gordon* (38 App. D. C. 443). See also *Vogt v. Vogt* (26 App. D. C. 46); *Johnson v. Washington Loan & Trust Co.* (33 App. D. C. 242, affd. 224 U. S. 224, 56 L. Ed. 741, 32 Sup. Ct. 421); *Breneman v. Herdman* (35 App. D. C. 27).

## EXPRESS OR IMPLIED TERMS

Where "the absolute power of disposal was given in express and unequivocal terms, or clearly and unmistakably implied, to the first taker, the remainder over was void." *Montgomery v. Brown* (25 App. D. C. 490).

## VESTED AND CONTINGENT ESTATES DISTINGUISHED

Distinction between vested and contingent remainder. *Fields v. Gwynn* (19 App. D. C. 99). See also *O'Brien v. Dougherty* (1 App. D. C. 148); *Richardson v. Penicks* (1 App. D. C. 261); *Marshall v. Augusta* (5 App. D. C. 183); *Craig v. Rowland* (10 App. D. C. 402); *Hauptman v. Carpenter* (16 App. D. C. 524); *Green v. Gordon* (38 App. D. C. 443).

## VESTING FAVORED

"The law favors the vesting of estates, and is inclined to treat conditions as subsequent rather than precedent." *Green v. Gordon* (38 App. D. C. 443).

Estates will be held to vest at the earliest possible moment, in absence of testamentary intent to contrary. *Green v. Gordon* (38 App. D. C. 443).

## § 45-813 [25: 273]. Alternative future estates.

Two or more future estates may be created to take effect in the alternative, so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1026.)

## § 45-814 [25: 274]. Expectant estates not to be defeated.

No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1029.)

## NOTES TO DECISIONS

## DOWER RIGHTS IN EXPECTANT ESTATE

This section and § 1030 (§ 45-815) do not change the common-law rule that a widow is not entitled to dower in lands to which her husband had a remainder in fee, if he predeceases the life tenant. *Tolty v. Tolty* (40 App. D. C. 587).

## § 45-815 [25: 275]. Expectant estate descendible and alienable.

Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1030.)

## CROSS REFERENCE

See notes to § 45-814.

## § 45-816 [25: 276]. Tenancies in common and joint tenancies.

Every estate granted or devised to two or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329.)

## AMENDMENT

Act of March 3, 1901, was amended by adding at the end thereof the words "unless otherwise expressed."

## NOTES TO DECISIONS

## PRIOR LAW

Construction of conveyance to two or more persons prior to adoption of code, see *O'Brien v. Dougherty* (1 App. D. C. 148) (devise to a class); *Carroll v. Reidy* (5 App. D. C. 59) (to husband and wife as tenants in common); *Alsop v. Fedarwisch* (9 App. D. C. 408); *Seitz v. Seitz* (11 App. D. C. 358).

Where the death of the testator occurred before the enactment of the code, the common law applied. *Noyes v. Parker* (68 App. D. C. 13, 92 Fed. (2d) 562).



Conveyances to husband and wife, their heirs and assigns forever, prior to adoption of this section, created a tenancy by the entirety, unaffected by the married woman's act. *Blount v. United States* (59 Ct. Cls. 328).

ESTATES BY ENTIRETIES

Estates by the entireties still exist in the District of Columbia in both personalty and realty. *Flaherty v. Columbus* (41 App. D. C. 525). See also *Marshall v. Lane* (27 App. D. C. 276), reforming a deed to create tenancy in common instead of estate of entireties. See opinion of Hoehling J., in *Settle v. Settle* (56 App. D. C. 50, 8 Fed. (2d) 911, 43 A. L. R. 1079), holding that conveyance to husband and wife "as joint tenants" creates tenancy by entireties.

This section does not abolish common-law tenancies by entireties. *Settle v. Settle* (56 App. D. C. 50, 8 Fed. (2d) 911, 43 A. L. R. 1079).

TENANCIES IN COMMON

Where brother and sister were engaged in a joint business venture regarding a piece of property, the title being in her name solely as a matter of convenience, they were in effect tenants in common. *Sheehy v. O'Donoghue* (68 App. D. C. 127, 94 Fed. (2d) 252).

§ 45-817 [25: 277]. Coparcenary estates abolished.

There shall be no estate in coparcenary in the District, and where two or more persons inherit from an intestate they shall be tenants in common. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 956.)

CROSS REFERENCES

See § 45-816.  
See notes to § 45-101.

§ 45-818 [25: 278]. Estates for years.

An estate for a determined period of time is an estate for years. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1032.)

§ 45-819 [25: 279]. Estates from year to year.

An estate expressed to be from year to year shall be good for one year only. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1033.)

NOTES TO DECISIONS

HOLDING OVER

A lease for one year, with a provision that unless the premises are vacated on the day of the expiration of the term, the lessee shall become a tenant for another year, creates a tenancy for one year only, and the tenant holding over becomes a tenant at sufferance. *Morse v. Brainerd* (42 App. D. C. 448). See also *Soper v. Myers* (45 App. D. C. 286).

§ 45-820 [25: 280]. Estates by sufferance.

All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hireings by the month or at any specified rate per month, shall be deemed estates by sufferance. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1034; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

Act of March 3, 1901, was amended by striking out the word "hirings" and inserting in lieu thereof the word "hireings."

CROSS REFERENCE

Statute of frauds, § 12-301.

NOTES TO DECISIONS

EXPIRATION OF LEASE

Where in lease tenant agreed to pay insurance, and paid same beyond term of lease, such payment did not extend the lease and he was tenant by sufferance. *Forster v. Elliot* (52 App. D. C. 107, 282 Fed. 735).

Tenants in possession of property under a lease which had expired were tenants by sufferance. *Weaver v. Koester* (54 App. D. C. 80, 294 Fed. 1011).

Tenant under six months' lease becomes tenant by sufferance on its expiration, notice of renewal having been verbal and not written. *National Cafés v. Elite Laundry Co.* (57 App. D. C. 178, 18 Fed. (2d) 828).

Tenant on expiration of one-year lease became tenant by sufferance, and entitled to thirty days' notice to vacate. *H. L. Rust Co. v. Drury* (62 App. D. C. 329, 68 Fed. (2d) 167).

VERBAL RENTING BY MONTH

This section of the code provides that all verbal hirings by the month, or at any specified rate per month, shall be deemed estates by sufferance. *Boss v. Hagan* (49 App. D. C. 106, 261 Fed. 254, 8 A. L. R. 1508).

§ 45-821 [25: 281]. Estates from month to month or from quarter to quarter.

An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1035.)

§ 45-822 [25: 282]. Estates at will—When terminated.

An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate shall not exist or be created except by express contract: *Provided, however*, That in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036.)

CROSS REFERENCES

Forcible entry and detainer, §§ 11-735 to 11-739, 22-3102.  
See §§ 45-903 and 45-910.

CITED

*McDonald v. Maxwell* (56 App. D. C. 237, 12 Fed. (2d) 822).

NOTES TO DECISIONS

LESSEE AFTER FORECLOSURE

Lessee of property sold under foreclosure proceedings becomes the tenant of the purchaser. *Bliss v. Duncan* (44 App. D. C. 93).

NOTICE AND TIME TO REMOVE PEACEABLY

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time peaceably to remove himself and his belongings from the property sold. *Thornhill v. Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

§ 45-823 [25: 283]. Provisions applicable to personal property.

All the provisions of this chapter and of sections 45-102 to 45-104, 45-203, 45-204, shall apply to personal property generally except where from the na-



ture of the property they are inapplicable. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036, as added by June 30, 1902, 32 Stat. 538, ch. 1329.)

COMPILER'S NOTE

This section was originally an amendatory section to prior section in relation to "estates at will."

Chapter 9.—LANDLORD AND TENANT

- Sec.
- 45-901. When notice to quit not necessary.
  - 45-902. Notices to quit—Month to month.
  - 45-903. Tenancy at will—Notice for termination.
  - 45-904. Tenancy by sufferance—When terminated.
  - 45-905. Notice not to be recalled.
  - 45-906. Service of notice.
  - 46-907. Refusal to quit, double rent.
  - 45-908. Agreement as to notice.
  - 45-909. Recovery of real and personal property leased together.
  - 45-910. Ejectment or summary proceedings.
  - 45-911. Arrears of rent and double rent.
  - 45-912. Consolidation of actions.
  - 45-913. Procedure to eject married woman who is a tenant.
  - 45-914. Plea of title.
  - 45-915. Landlord's lien for rent.
  - 45-916. Lien—How enforced.
  - 45-917. How attachment enforced.
  - 45-918. Property subject to lien for rent not to be taken on execution without first paying all rent due.
  - 45-919. Distress not void because of irregularity—Party not trespasser ab initio—Special damages only recoverable—Tender of amends defeats recovery.
  - 45-920. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.
  - 45-921. Representatives of life tenant may recover from under-tenant proportion of rent.
  - 45-922. Debt may be brought for instalments of rent under lease for life.
  - 45-923. Action of case for use and occupation—Parol agreement evidence of quantum of damages.
  - 45-924. Lunatic, entitled to renewal of lease, or his guardian or committee, under order of court, may surrender lease—Also make new lease.
  - 45-925. Lease made pursuant to section 45-924 valid.
  - 45-926. Accruals from renewals of leases, property of lunatic—Unapplied part at death of lunatic treated as real property, unless lunatic be tenant for life, then personal property.
  - 45-927. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.
  - 45-928. Expenses and costs of renewal chargeable against interest of infant or lunatic.
  - 45-929. Renewed leases shall be to the same uses, trusts, charges, incumbrances, devises, and conditions as surrendered leases were.
  - 45-930. Surrendered and renewed lease of lunatic or infant valid.
  - 45-931. Surrender for new lease good without surrender of under leases—Under leases continue unaffected—All rights and remedies to continue.
  - 45-932. Assignee of reversion.
  - 45-933. Grants of remainders, reversions, and rents good without attornment—Payment of rent without notice valid.
  - 45-934. Fraudulent attornment void—Possession not changed by such attornment—Attornment pursuant to judgment excepted.

§ 45-901 [25: 311]. When notice to quit not necessary.

When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1218.)

CROSS REFERENCES

Proceedings in ejectment apply to landlord and tenant, § 16-512.  
See note to § 45-819.  
See § 45-908.

§ 45-902 [25: 312]. Notices to quit—Month to month.

A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1219.)

NOTES TO DECISIONS

DATE NOTICE TERMINATES

While the landlord is not required to specify in the notice the date of the termination of the notice, having done it he is bound by that date. *Merritt v. Thompson* (53 App. D. C. 233, 289 Fed. 631).

DESCRIPTION OF PROPERTY

A notice to quit which describes the property in the same manner as in defendant's lease, and which gives more than 30 days' notice, held to be sufficient. *Bliss v. Duncan* (44 App. D. C. 93).

RECEIPT OF RENT AFTER NOTICE

"The receipt of rent by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice \* \* \*. But the receipt of rent for the current month, pending the notice to quit, cannot have that effect." *Byrne v. Morrison* (25 App. D. C. 72).

Acceptance of rent to November 30 is not a waiver of a notice to quit expiring on December 1. *McCoy v. Duehay* (51 App. D. C. 363, 279 Fed. 1001). See *Byrne v. Morrison* (25 App. D. C. 72).

THIRTY-DAY NOTICE

Thirty-day notice, expiring on the day of the month from which the tenancy is alleged by defendant to run, is sufficient, whether estate be from month to month or by sufferance. *McCoy v. Duehay* (51 App. D. C. 363, 279 Fed. 1001).

Sundays and half holidays on Saturdays under section 1389 (§ 28-616) are not excluded in computing the time given in the notice. *McCoy v. Duehay* (51 App. D. C. 363, 279 Fed. 1001).

Notice is not bad because it gives 31 days' notice. *McCoy v. Duehay* (51 App. D. C. 363, 279 Fed. 1001), citing *Boss v. Hagan* (49 App. D. C. 106, 261 Fed. 254).

A notice dated and served July 1, requiring tenant to vacate on July 31, is insufficient. "By the rule of interpretation, excluding the first day and including the last, there was not full 30 days." *Merritt v. Thompson* (53 App. D. C. 233, 289 Fed. 631).

§ 45-903 [25: 313]. Tenancy at will—Notice for termination.

A tenancy at will may be terminated by thirty days' notice in writing by either landlord or tenant. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1220.)

NOTES TO DECISIONS

NOTICE TO FORMER OWNER

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill v. Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).



§ 45-904 [25: 314]. Tenancy by sufferance—When terminated.

A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the 30th day after the day of the service of the notice. If such notice expires before any periodical instalment of rent fall due, according to the terms of the tenancy, the landlord shall be entitled to a proportionate part of such instalment to the date fixed for quitting the premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1221.)

#### CROSS REFERENCES

See note to § 12-301. *Standard Sav. Bank v. Stone* (52 App. D. C. 42, 280 Fed. 1016).

See note to § 45-819. *Morse v. Brainerd* (42 App. D. C. 448).

#### NOTES TO DECISIONS

##### MASTER AND SERVANT RELATIONSHIP

Where the servant was to do certain work, and while performing the same he was to occupy the premises without charge, the relationship was master and servant, not landlord and tenant. *Turner v. Mertz* (55 App. D. C. 177, 3 Fed. (2d) 348, 39 A. L. R. 1140).

##### NOTICE GENERALLY

A notice to terminate a tenancy by sufferance is sufficient which requires tenant to quit "at the end of 30 days from the date of service" upon him, instead of on the thirtieth day thereafter. *Hayden v. Filippone* (51 App. D. C. 246, 278 Fed. 329).

##### NOTICE IN WRITING

A notice served on tenant personally, wherein he is described as "Wm." instead of Richard, and giving him the required length of time in which to vacate is sufficient under this section. "The proceedings in landlord and tenant cases are informal, and if the substantial rights of both parties are preserved, a departure from strict procedure may be ignored." *Creel v. Adams* (49 App. D. C. 306, 265 Fed. 456).

To terminate a tenancy by sufferance, notice in writing must be given. *Beyer v. Smith* (59 App. D. C. 32, 32 Fed. (2d) 423, cert. den. 280 U. S. 557, 74 L. Ed. 613, 50 Sup. Ct. 17).

##### PROPERTY USED FOR BUSINESS PURPOSES

Where plaintiff served defendant notice to quit using language of statute, and said also, "The said premises being necessary for me for my immediate personal occupancy"; such notice is sufficient whether the property was being used for business purposes or not. *Weaver v. Koester* (54 App. D. C. 80, 294 Fed. 1011).

§ 45-905 [25: 315]. Notice not to be recalled.

Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the tenant as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1222; June 30, 1902, 32 Stat. 542, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by inserting after the word "if," the word "he."

§ 45-906 [25: 316]. Service of notice.

Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he

can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1223.)

#### CITED

*Hirsh v. Block* (50 App. D. C. 56, 267 Fed. 614).

#### NOTES TO DECISIONS

##### DELIVERY TO MINOR SON

A notice delivered by landlord to tenant's son, 17 years of age, at her request, and the same delivered to her by the boy, is served substantially in compliance with the statute. *Hockman v. Shreve* (50 App. D. C. 140, 269 Fed. 482).

##### DELIVERY TO TENANT'S WIFE

A landlord left notice to quit with tenant's wife, with a request that she deliver it to him, which was done. "There is nothing in this (section) which requires that the landlord in person or an officer shall make the service. It may be made by any person acting for the landlord. In this case the wife, at the request of the landlord, handed the notice to the tenant, and thus he was personally served. \* \* \* In the case of a notice to quit, service by any person is enough, so long as the tenant receives the notice in time to allow the statutory period of vacate." *Hardebeck v. Hamilton* (50 App. D. C. 113, 268 Fed. 703).

§ 45-907 [25: 317]. Refusal to quit, double rent.

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1224.)

§ 45-908 [25: 318]. Agreement as to notice.

Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1236.)

#### NOTES TO DECISIONS

##### FAILURE OF RENT—NOTICE WAIVED

Defendant agreed that in the event he should not pay the rent when due he should not be entitled to any notice to quit, the usual thirty days' notice being expressly waived; such contract was specifically authorized by this section. *H. L. Rust Co. v. Drury* (62 App. D. C. 329, 68 Fed. (2d) 167).

§ 45-909 [25: 319]. Recovery of real and personal property leased together.

Whenever real and personal property shall be leased together, as, for example, a house with the furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, before the municipal court provided for in sections 11-701 to 11-749 of this Code may have a judgment for recovery of the personalty as well as for the recovery of the realty. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134.)



AMENDMENT

Act of March 3, 1901, was amended by changing name of court from justice of peace to municipal court.

§ 45-910 [25: 320]. Ejectment or summary proceedings.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the District Court of the United States for the District of Columbia; or the landlord may bring an action to recover possession before the municipal court, as provided in sections 11-701 to 11-749 of this Code. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of March 3, 1901, was amended by changing name of court from "justice of peace" to "municipal court."

CROSS REFERENCES

Jurisdiction of municipal court, § 11-735.  
See § 45-822.

NOTES TO DECISIONS

NOTICE TO FORMER OWNER

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill v. Atlantic Life Ins. Co.* (63 App. D. C. 184, 70 Fed. (2d) 846).

§ 45-911 [25: 321]. Arrears of rent and double rent.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste: *Provided*, That in such action before the municipal court the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENTS

Act of March 3, 1901, was amended by striking out the words "for possession" following the words "by the court."

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

NOTES TO DECISIONS

LESSEE BREACHING COVENANT

Where lessee had breached covenant against subletting and lessor returned check for rent payment but lessee had continued in possession, lessor was entitled to a judgment for possession and rent. *Merritt v. Kay* (54 App. D. C. 152, 295 Fed. 973).

§ 45-912 [25: 322]. Consolidation of actions.

If actions be brought separately, either in said District Court of the United States for the District

of Columbia or in the municipal court, for arrears of rent and for the possession, they may be afterwards consolidated and one judgment rendered in them for the possession and also for the rent. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

§ 45-913 [25: 323]. Procedure to eject married woman who is a tenant.

In all cases in which a married woman is or shall hereafter be a tenant of real estate in this District, and has defaulted in the payment of rent therefor or has made other default, it shall be lawful for the landlord to make such re-entry or bring such action for recovery of the demised premises as he or she might do if the lessee were a feme sole and had contracted for the payment of said rents or the performance of other acts and to suffer such re-entry to be made upon default therein. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1169.)

§ 45-914 [25: 324]. Plea of title.

If, in an action in the municipal court to recover possession the defendant shall plead a title in himself or in some person under whom he claims, not derived from the plaintiff, the further proceeding therein shall be as directed in sections 11-701 to 11-749 of this Code. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1228; Feb. 17, 1909, 35 Stat. 623, ch. 134.)

AMENDMENT

Act of February 17, 1909, changed name from "justice of peace" to "municipal court."

§ 45-915 [25: 325]. Landlord's lien for rent.

The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1229.)

NOTES TO DECISIONS

CLAIM IN BANKRUPTCY

A landlord has a lien for rent on property of a bankrupt on leased premises, which may be enforced by making claim in bankruptcy. *In re Caplan* ((D. C.-Md.), 23 Fed. (2d) 680).

DURATION OF LIENS

Landlord's lien, once it attached, continued to attach no matter in whose hands the chattels may have come, unless displaced by removal of goods or sale in regular course of business, and sale of stock in mass which was not removed did not displace the lien. *Fowler v. Rapley* (15 Wall. (82 U. S.) 328, 21 L. Ed. 35).

LIEN SURRENDER OF LEASE

Surrender of lease and wrongful eviction of tenant by landlord as a defense to action for rent, see *Okie v. Person* (23 App. D. C. 170). See also *Richmond v. Cake* (1 App. D. C. 447); *Hume v. Riggs* (12 App. D. C. 355).

PRIORITY

Lien of landlord, so far as respects chattels on the premises, was entitled to priority over deeds of trust, unless the statutory lien was displaced. *Beall v. White* (94 U. S. 382, 24 L. Ed. 173).



When the landlord is attempting to enforce a lien against chattels of lessee, which chattels were purchased on a conditional sales contract, his lien must be consistent with title and he cannot prevail against vendor of chattels even though conditional sales contract was not recorded. *Stern Co. v. Rosenberg* (67 App. D. C. 99, 89 Fed. (2d) 843).

#### SECURED LIEN

Landlord to whom chattels are delivered as security for payment of rent "had a lien on the property for the payment of his rent, which was something more than the tacit lien given to a landlord by the statute" and his possession cannot be disturbed without previous payment of the claim. *Brown v. Petersen* (25 App. D. C. 359).

#### TIME OF ATTACHMENT OF LIEN

Landlord's lien attached to chattel the moment it was placed upon the premises, and as long as it remained on premises the lien continued until each instalment of rent became due and for three months thereafter, and then ceased as to that instalment. *Webb v. Sharp* (13 Wall. (80 U. S.) 14, 20 L. Ed. 478).

The landlord's lien for rent commences with the tenancy, and is superior to chattel mortgage given by tenant thereafter. *Spilman v. Geiger* (61 App. D. C. 164, 58 Fed. (2d) 890).

#### § 45-916 [25: 326]. Lien—How enforced.

The said lien may be enforced—

First. By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels.

Second. By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosoever hands they may be found.

Third. By action against any purchaser of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1230.)

#### CROSS REFERENCE

See note to § 45-915.

#### § 45-917 [25: 327]. How attachment enforced.

Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1231.)

#### § 45-918 [25: 328]. Property subject to lien for rent not to be taken on execution without first paying all rent due.

No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises

at the time of the taking such goods or chattels by virtue of such execution: *Provided*, The said arrears of rent do not amount to more than three months' rent, and in case the said arrears shall exceed three months' rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, three months' rent, may proceed to execute his judgment as he might have done before the making of this section; and the marshal is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money. (8 Ann. ch. 14, § 1, 1709; Kilty's Rep. 248; Alex. Br. Stat. 681; Comp. Stat. D. C., 325, § 41.)

#### CROSS REFERENCE

See note to § 45-309.

§ 45-919 [25: 329]. Distress not void because of irregularity—Party not trespasser ab initio—Special damages only recoverable—Tender of amends defeats recovery.

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case at the election of the plaintiff or plaintiffs: *Provided always*, That where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs: *Provided nevertheless*, That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought. (11 Geo. 2, ch. 19, §§ 19 and 20, 1738; Kilty's Rep. 251; Alex. Br. Stat. 741, 742; Comp. Stat. D. C., 334, §§ 66, 67.)

§ 45-920 [25: 330]. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.

If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any court of record. (11 Geo. 2, ch. 19, § 3, 1738; Kilty's Rep. 251; Alex. Br. Stat. 732; Comp. Stat. D. C., 329, § 53.)



§ 45-921 [25: 331]. Representatives of life tenant may recover from under-tenant proportion of rent.

Where any tenants for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively. (11 Geo. 2, ch. 19, § 15, 1738; Kilty's Rept. 251; Alex. Br. Stat. 739; Comp. Stat. D. C. 333, § 64.)

§ 45-922 [25: 332]. Debt may be brought for instalments of rent under lease for life.

It shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done, in case such rent were due, and reserved upon a lease for years. (8 Ann, ch. 14, § 4, 1709; Kilty's Rept. 248; Alex. Br. Stat. 682; Comp. Stat. D. C., 325, § 42.)

§ 45-923 [25: 333]. Action of case for use and occupation—Parol agreement evidence of quantum of damages.

It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (11 Geo. 2, ch. 19, § 14, 1738; Kilty's Rep. 251; Alex. Br. Stat. 738; Comp. Stat. D. C., 333, § 63.)

§ 45-924 [25: 334]. Lunatic, entitled to renewal of lease, or his guardian or committee, under order of court, may surrender lease—Also make new lease.

In all cases where any lunatic is or shall be intitled, or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of one or more person or persons, or for any term or number of years, absolute or determinable on the death of one or more person or persons, or otherwise; it shall and may be lawful to and for such lunatic, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor, signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or sur-

renders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct. (11 Geo. 3, ch. 20, § 1, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 74.)

§ 45-925 [25: 335]. Lease made pursuant to section 45-924 valid.

All and every such lease or leases so to be made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the law, to all intents and purposes, as if such lunatic was at the time of making or executing thereof of sane mind, and had executed the same in his or her own proper person. (11 Geo. 3, ch. 20, § 2, 1771; Kilty's Rept. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 75.)

§ 45-926 [25: 336]. Accruals from renewals of leases, property of lunatic—Unapplied part at death of lunatic treated as real property, unless lunatic be tenant for life, then personal property.

All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the said lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the chancellor shall direct: but, upon the death of such lunatic or lunatics, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of such lunatic or lunatics, at his, her or their death, shall, as between the representatives of the real and personal estates of all such lunatics, be considered as real estate, unless such lunatic or lunatics shall be tenants for life only; and then the same shall be considered as personal estate. (11 Geo. 3, ch. 20, § 3, 1771; Kilty's Rep. 253; Alex. Br. Stat. 792; Comp. Stat. D. C., 336, § 76.)

§ 45-927 [25: 337]. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.

In all cases where any person under the age of twenty-one years, or any lunatic, is or shall become interested in or intitled to any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politick, corporate or collegiate, aggregate or sole, for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons or otherwise, it shall and may be lawful for such person under the age of twenty-one years, or for his or her guardian or guardians, or



other person or persons on his or her behalf, and for such lunatick, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of twenty-one years, and such lunaticks, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of twenty-one years, or lunatick, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct. (29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D. C., 335, § 70.)

§ 45-928 [25: 338]. Expenses and costs of renewal chargeable against interest of infant or lunatic.

All and every sum and sums of money and other consideration, paid or advanced by any such guardian, trustee, committee or other person, for or on account of the renewal of any such lease or leases, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or lunatick for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premisses, together with interest for the same, as the said court shall direct and determine. (29 Geo. 2, ch. 31, § 2, 1756; Kilty's Rep. 253; Alex. Br. Stat. 789; Comp. Stat. D. C., 335, § 71.)

§ 45-929 [25: 339]. Renewed leases shall be to the same uses, trusts, charges, incumbrances, devises, and conditions as surrendered leases were.

The respective leases to be so renewed, shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made. (29 Geo. 2, ch. 31, § 3, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 335, § 72.)

§ 45-930 [25: 340]. Surrendered and renewed lease of lunatic or infant valid.

Every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender had been made by and on the behalf of a person of full age, or sane mind. (29 Geo. 2, ch. 31, § 4, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 336, § 73.)

§ 45-931 [25: 341]. Surrender for new lease good without surrender of under leases—Under leases continue unaffected—All rights and remedies to continue.

In case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all the under leases, be as good and valid, to all intents and purposes, as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be intitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands, and tenements, in the respective under leases, comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have, and be intitled to, such and the same remedy, by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had, in case the respective under leases had been renewed under such new principal lease. (4 Geo. 2, ch. 28, § 6, 1731; Kilty's Rep. 249; Alex. Br. Stat. 708; Comp. Stat. D. C., 328, § 50.)

§ 45-932 [25: 342]. Assignee of reversion.

The grantee or assignee of the reversion of any leased premises shall have the same right of action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee, or assignee, upon any covenants in the lease which the lessee might have had against the lessor. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1234.)

#### NOTES TO DECISIONS

##### COVENANT AGAINST SUBLETTING

Covenant against subletting runs with the land and may be enforced by assignee of reversion. *Bailey v. Allan E. Walker & Co.* (53 App. D. C. 307, 290 Fed. 282).

##### NEW OWNERS' ACTION FOR RENT, USE, AND OCCUPATION

When the new owners purchased the property, they acquired the same right of action for rent, or for use and occupation, against the lessee, if holding over his term, which the original owner had. *Selden v. Lee* (55 App. D. C. 164, 3 Fed. (2d) 335).

§ 45-933 [25: 343]. Grants of remainders, reversions, and rents good without attornment—Payment of rent without notice valid.

All grants or conveyances of any manors or rents, or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents



and purposes, without any attornment of the tenants of any such manors, or of the land out of which rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made: *Provided, nevertheless*, That no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee. (4 Ann. ch. 16, §§ 9 and 10, 1705; Kilty's Rep. 246; Alex. Br. Stat. 660, 661; Comp. Stat. D. C., 496, §§ 31 and 32.)

§ 45-934 [25: 344]. **Fraudulent attornment void—Possession not changed by such attornment—Attornment pursuant to judgment excepted.**

All and every fraudulent attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: *Provided always*, That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited. (11 Geo. 2, ch. 19, § 11, 1738; Kilty's Rep. 251; Alex. Br. Stat. 737; Comp. Stat. D. C., 332, § 60.)

## Chapter 10.—POWERS

Sec.

- 45-1001. Definition.
- 45-1002. General power.
- 45-1003. Special power.
- 45-1004. Beneficial power.
- 45-1005. Effect of absolute power to owner of particular estate.
- 45-1006. Effect of such power to one without particular estate.
- 45-1007. Effect where no remainder on particular estate.
- 45-1008. Construction of power to particular tenant to devise the inheritance.
- 45-1009. Right of grantor to reserve power.
- 45-1010. Liability of beneficial powers in equity.
- 45-1011. General powers in trust.
- 45-1012. Special powers in trust.
- 45-1013. Trust powers imperative.
- 45-1014. Selection under trust powers.
- 45-1015. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.
- 45-1016. Execution of trust powers for benefit of creditors and assignees.
- 45-1017. Manner of executing powers.
- 45-1018. Power by grant may not be executed by will.
- 45-1019. Instrument will be deemed execution of power if grantee had no other right to make it.

§ 45-1001 [25: 391]. **Definition.**

A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1037.)

## CROSS REFERENCE

Power of surviving trustee to execute power of sale, § 18-606.

§ 45-1002 [25: 392]. **General power.**

A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1038.)

§ 45-1003 [25: 393]. **Special power.**

A power is special—

First. Where the persons or class of persons to whom the disposition of the lands under the power is to be made are designated.

Second. Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1039.)

§ 45-1004 [25: 394]. **Beneficial power.**

A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1040.)

§ 45-1005 [25: 395]. **Effect of absolute power to owner of particular estate.**

Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1041.)

§ 45-1006 [25: 396]. **Effect of such power to one without particular estate.**

Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1042.)

§ 45-1007 [25: 397]. **Effect where no remainder on particular estate.**

In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1043.)

§ 45-1008 [25: 398]. **Construction of power to particular tenant to devise the inheritance.**

Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of sections 45-1005 to 45-1007. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1044.)

§ 45-1009 [25: 399]. **Right of grantor to reserve power.**

The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he



might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this chapter as if granted to another. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1045.)

**§ 45-1010 [25: 400]. Liability of beneficial powers in equity.**

Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1046.)

**§ 45-1011 [25: 401]. General powers in trust.**

A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1047.)

**§ 45-1012 [25: 402]. Special powers in trust.**

A special power is in trust—

First. When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power.

Second. When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1048.)

**§ 45-1013 [25: 403]. Trust powers imperative.**

Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1049.)

**§ 45-1014 [25: 404]. Selection under trust powers.**

A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1050.)

**§ 45-1015 [25: 405]. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.**

Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1051.)

**§ 45-1016 [25: 406]. Execution of trust powers for benefit of creditors and assignees.**

The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1052.)

**§ 45-1017 [25: 407]. Manner of executing powers.**

No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1053.)

**§ 45-1018 [25: 408]. Power by grant may not be executed by will.**

Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it can not be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1054.)

**CROSS REFERENCE**

Wills, §§ 19-107 and 19-203.

**§ 45-1019 [25: 409]. Instrument will be deemed execution of power if grantee had no other right to make it.**

Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1055.)

**Chapter 11.—SALE OF CONTINGENT AND LIMITED INTERESTS**

**Sec.**

- 45-1101. Sale of contingent interests.
- 45-1102. Application for sale by verified bill in equity showing all facts.
- 45-1103. Proceeds of sale of contingent interest held as real property.
- 45-1104. Sale of all limited interests.

**§ 45-1101 [25: 421]. Sale of contingent interests.**

Where real estate is limited to one or more for life, with a contingent limitation over to such issue of one or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 97.)

**NOTES TO DECISIONS**

**AUTHORITY OF COURT**

This section clothed the court with authority to sell a restricted and particular class of limited estates, and was therefore special legislation, the specific provisions of



which had to be given effect as against the more general and more comprehensive provisions of § 100 (§ 45-1104) on the same subject matter. *Simon v. Simon* (58 App. D. C. 158, 26 Fed. (2d) 530).

#### BOND OF TRUSTEE

Bond of trustee for sale of property of a minor for re-investment purposes may not be attacked as invalid by the surety. *United States ex rel. Hine v. Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433).

§ 45-1102 [25: 422]. Application for sale by verified bill in equity showing all facts.

Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of fourteen years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 98.)

§ 45-1103 [25: 423]. Proceeds of sale of contingent interest held as real property.

The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 99.)

§ 45-1104 [25: 424]. Sale of all limited interests.

Wherever one or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim, or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 100.)

#### CROSS REFERENCE

See notes to § 45-1101. *United States ex rel. Hine v. Morse* (218 U. S. 493, 54 L. Ed. 1123, 31 Sup. Ct. 37, revg. 29 App. D. C. 433); *Simon v. Simon* (58 App. D. C. 158, 26 Fed. (2d) 530).

#### NOTES TO DECISIONS

##### PRIOR TO ENACTMENT OF CODE

Equity had no jurisdiction to decree sale of lands of a lunatic for the purpose of better investment. *Clark v. Mathewson* (7 App. D. C. 382).

#### Chapter 12.—USES AND TRUSTS

##### Sec.

- 45-1201. The legal estate in cestui que use.
- 45-1202. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizin of same.
- 45-1203. Purchaser for value.

§ 45-1201 [25: 481]. The legal estate in cestui que use.

Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1617.)

#### CROSS REFERENCE

Fraudulent conveyances, §§ 12-401 to 12-403.

§ 45-1202 [25: 482]. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizin of same.

Where divers and many persons be, or hereafter shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, in every such case those person or persons which have or hereafter shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, and other hereditaments, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments; saving and reserving to all and singular persons, and bodies politick, their heirs, and successors, other than those person or persons which be seized, or hereafter shall be seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had before the year 1535. (27 Hen. 8, ch. 10, § 2, 1535; Kilty's



Rep. 231; Alex. Br. Stat. 294; Comp. Stat. D. C., 537, § 2.)

## CROSS REFERENCE

See note to § 45-309.

## § 45-1203 [25: 483]. Purchaser for value.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1618.)

## Chapter 13.—WASTE

## Sec.

- 45-1301. Writ of waste—Lease forfeited for waste and lessee pays treble damages.
- 45-1302. Waste not to be committed except with license in writing—Damages and amercement for waste.
- 45-1303. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.
- 45-1304. Joint tenant or tenant in common against cotenant.

## § 45-1301 [25: 491]. Writ of waste—Lease forfeited for waste and lessee pays treble damages.

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or a woman in dower; and he which shall be attainted of waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. (6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D. C., 319, § 21.)

## CROSS REFERENCE

See note to § 45-309.

## § 45-1302 [25: 492]. Waste not to be committed except with license in writing—Damages and amercement for waste.

Fermors, during their terms, shall not make waste, sale or exile of house, or woods, nor of any thing belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention, that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amercement grievously. (52 Hen. 3, ch. 23, § 2, 1267; Kilty's Rep. 209; Alex. Br. Stat. 46-47; Comp. Stat. D. C., 318, § 19.)

## § 45-1303 [25: 493]. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.

Because that diverse people in times past have let their lands and tenements to divers persons, that is to say, some for term of life or of another man's life, and some for term of years, the said tenants have oftentimes let and granted their estate which they had in the same lands and tenements, to many persons, to the intent that they in the reversion, that is to say, their lessors, their heirs, or their assigns, might not have knowledge of their names, and after

the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disheritance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estates, in the manner and form abovesaid, were unpunishable of waste; and also where after the said grant and lease the said first tenants of the said lands and tenements take the profits at the time of the waste done, to their own proper use. (11 Hen. 6, ch. 5, § 1, 1433; Kilty's Rep. 227; Alex. Br. Stat. 243; Comp. Stat. D. C., 320, § 26.)

## § 45-1304 [25: 494]. Joint tenant or tenant in common against cotenant.

Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of partition may have said waste charged against the share of the cotenant committing the same. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1622.)

## Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSE ACT

## Sec.

- 45-1401. Enactment and prohibition clause.
- 45-1402. Definitions—Exceptions.
- 45-1403. Real Estate Commission created—Membership—Seal—Records—Compensation.
- 45-1404. Qualifications for license.
- 45-1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.
- 45-1406. Procedure when license refused.
- 45-1407. Details relating to license.
- 45-1408. Suspension or revocation of license—Causes enumerated.
- 45-1409. Hearing before suspension—Court review—Appeal.
- 45-1410. Provisions applicable to nonresident brokers and salesmen.
- 45-1411. Power to obtain evidence.
- 45-1412. Further exemptions—Exceptions.
- 45-1413. List of licensees to be published.
- 45-1414. Fraudulent transfers or loans.
- 45-1415. License revoked on conviction of crime.
- 45-1416. Penalties—Prosecutions.
- 45-1417. Bond required for renewal of licenses.
- 45-1418. Saving clause.

## § 45-1401 [20: 1970]. Enactment and prohibition clause.

That on and after ninety days from the date of enactment of this chapter it shall be unlawful in the District of Columbia for any person, firm, partnership, copartnership, association, or corporation (foreign or domestic) to act as a real-estate broker, real-estate salesman, business-chance broker or business-chance salesman, or to advertise or assume to act as such, without a license issued by the Real



Estate Commission of the District of Columbia. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 1; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 2.)

#### AMENDMENT

The 1939 amendment added the words "or business-chance salesman."

#### CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Exempted from operation of Money Lender License Law, § 26-610.

#### § 45-1402 [20: 1971]. Definitions—Exceptions.

Whenever used in this chapter "real-estate broker" means any person, firm, association, partnership, or corporation (foreign or domestic) who, for another and for a fee, commission, or other valuable consideration, or who, with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, lists for sale, sells, exchanges, purchases, rents, or leases or offers or attempts or agrees to negotiate a sale, exchange, purchase, lease, or rental of an estate or interest in real estate, or collects or offers or attempts or agrees to collect rent or income for the use of real estate, or negotiates or offers or attempts or agrees to negotiate, a loan secured or to be secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, or who is engaged in the business of erecting houses or causing the erection of houses for sale on his, their, or its land and who sells, offers, or attempts to sell such houses, or who, as owner or otherwise and as a whole or partial vocation, sells, or through solicitation, advertising, or otherwise, offers or attempts to sell or to negotiate the sale of any lot or lots in any subdivision of land comprising ten lots or more: *Provided, however,* That this definition shall not apply to the sale of space for advertising of real estate in any newspaper, magazine, or other publication. A "business-chance broker" within the meaning of this chapter is any person, firm, partnership, association, copartnership, or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of a business for others.

"Real-estate salesman" means a person employed by a licensed real-estate broker to list for sale, sell, or offer for sale, to buy or offer to buy, or to negotiate the purchase or sale, or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent, or place for rent, any real estate, or collect or offer or attempt to collect rent or income for the use of real estate.

"Business-chance salesman" means any person employed by a licensed business-chance broker to list for sale, sell, or offer for sale, to buy or offer to buy, to lease or offer to lease, or to negotiate the purchase or sale or exchange of a business, business opportunity, or good will of an existing business for or in behalf of such business-chance broker.

Persons employed by a licensed broker in a clerical capacity or in subordinate positions who receive a fixed compensation and who receive no additional commission or compensation for specific acts of renting or leasing real estate and who do not sell or exchange, or offer or attempt to sell or exchange, real estate or a business, business opportunity, or the good will of a business shall not be required to obtain licenses.

One act for a compensation or valuable consideration of buying or selling real estate for or of another, or offering for another to buy, sell, or exchange real estate, or leasing, renting, or offering to lease or rent real estate, or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, except as herein specifically excepted, shall constitute a person, firm, partnership, copartnership, association, or corporation performing, or offering, or attempting to perform any of the acts enumerated herein, a real-estate broker, unless such act shall be performed or offered or attempted to be performed by a person for and in behalf of a real-estate broker in which event such act shall constitute such person a real-estate salesman.

One act for a compensation or valuable consideration of buying, selling or leasing or exchanging a business, business opportunity, or the good will of a business for or of another, or offering for another to buy, sell, exchange, or lease a business, business opportunity, or the good will of a business, except as herein specifically excepted, shall constitute the person, firm, partnership, copartnership, association, or corporation performing or offering or attempting to perform any of the acts enumerated herein, a business-chance broker, unless such act shall be performed or offered or attempted to be performed by a person for or on behalf of a business-chance broker, in which event such act shall constitute such person a business-chance salesman.

The provisions of this chapter shall not apply to receivers, referees, administrators, executors, guardians, trustees, or other persons appointed or acting under the judgment or order of any court; or public officers while performing their official duty, or attorneys at law in the ordinary practice of their profession; nor to any person, copartnership, association, or corporation, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, or to the regular officers and employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investments therein, except as otherwise provided in this chapter.

Every provision of this chapter applying specifically to an applicant or application for a license as a real-estate broker or a real-estate salesman, and to a real-estate license, and to a licensee licensed as a real-estate broker or a real-estate salesman, and to anyone acting in the capacity of a real-estate broker or a real-estate salesman without a license, shall likewise apply in a similar manner, respectively, to every applicant and application for a license as a



business-chance broker or a business-chance salesman, and to every business-chance license, and to every licensee licensed as a business-chance broker or a business-chance salesman, and to anyone acting in the capacity of a business-chance broker or a business-chance salesman without a license. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 2; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 3.)

#### AMENDMENT

The 1939 amendment added in the first paragraph the words beginning "or who is engaged" and continuing to the colon before the words "Provided, however"; deleted the following words which concluded the first paragraph, "as a whole or partial vocation"; deleted the following words which concluded the second paragraph, "for or in behalf of such real-estate broker"; added the third paragraph; deleted from the fourth paragraph the words "as collectors, or in similar subordinate and administrative positions" and inserted in lieu thereof the words that now follow the word "capacity" and conclude the paragraph except the last seven words; added in the fifth paragraph the words "or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other incumbrance upon or transfer of real estate" and the words beginning "unless such act" and concluding the said paragraph; added the sixth paragraph; added in the seventh paragraph the words beginning "nor to any person" and concluding the said paragraph; and, added the eighth paragraph.

#### CROSS REFERENCE

Other exemptions, § 45-1412.

### § 45-1403 [20: 1972]. Real Estate Commission created—Membership—Seal—Records—Compensation.

There is hereby created the Real Estate Commission of the District of Columbia. The Commissioners of the District of Columbia shall appoint two persons, not more than one of whom shall have been actively engaged in or closely connected with the business or vocation of real-estate broker or real-estate salesman within five years immediately prior to appointment, who shall serve as members of said Real Estate Commission of the District of Columbia. In addition thereto, the assessor of the District of Columbia shall serve, ex-officio, as a member of said Real Estate Commission but without added compensation for his services as such. One member of said Commission shall be appointed for a term of one year; one member shall be appointed for a term of two years, and until their successors are appointed and qualified; thereafter the term of the members of said Commission shall be for three years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term. The Commissioners of the District of Columbia may remove members of the Real Estate Commission at any time for cause.

The assessor, ex-officio, shall be the chairman of said Real Estate Commission, which is hereby authorized and empowered to elect a treasurer of said Commission and to do all things necessary and convenient for carrying into effect the provisions of this chapter and the rules and regulations promulgated from time to time by the Commissioners.

The Commissioners of the District of Columbia shall employ and remove at their pleasure a secretary and such assistants as shall be deemed necessary to discharge the duties imposed by the provisions of

this chapter and shall prescribe their duties and fix their compensation in accordance with the provisions of the Classification Act of 1923, as amended.

The Commissioners of the District of Columbia shall provide for the use of the Real Estate Commission such office space, furniture, stationery, fuel, light, and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this chapter.

The Commission shall adopt a seal with such design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Copies of all records and papers in the office of the Commission, duly certified and authenticated by the seal of said Commission, shall be received in evidence in all courts equally and with like effect as the original. The Commission shall keep a record of all its proceedings and a complete stenographic record of all hearings authorized under this chapter.

All records kept in the office of the Commission under authority of this chapter shall be open to public inspection under reasonable rules and regulations to be prescribed by the Commission.

The compensation of members of the Commission, except the ex officio member, shall be \$10 each for personal attendance at each meeting, but shall not exceed for any member \$1,500 per annum.

The payment of such allowance shall be made from any unexpended balance in the treasury of said Commission remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such allowance the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total receipts; and if at the close of each fiscal year any funds unexpended in excess of the sum of \$1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia: *Provided*, That no expenses incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia.

All fees and charges payable under the provisions of this chapter shall be paid to the treasurer of the Commission. The Commission is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission at the end of each fiscal year and make a report thereof in writing to the Commissioners of the District of Columbia. The said auditor shall have free access to all books of accounts, papers, and records of the said Commission.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce, revise, or repeal whatever reasonable regulations may be necessary to carry out the provisions of this chapter. (Aug. 25, 1937, 50 Stat. 788, ch. 760, § 3; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 4.)

#### AMENDMENT

The 1939 act amended the seventh paragraph to read as it now appears. This paragraph in the 1937 act read as follows, "Each member of the Commission, ex-



cept the ex-officio member, shall receive an allowance at the rate of \$10 for each day of seven hours such member is actually engaged in the performance of duties as a member of the Commission: *Provided, however*, That no member shall receive in any one year a sum greater than \$2,000."

## CROSS REFERENCES

Classification Act of 1923, U. S. C., title 5, ch. 13.  
Nonresident brokers and salesmen, § 45-1410.  
Persons exempted from operation of this act, §§ 45-1402, 45-1412.  
Refund of fees and taxes generally, § 47-1017 and notes.  
Refunds of fees when license refused, § 47-1018.  
Rules and regulations for obtaining copy of stenographic notes of proceedings, § 45-1409.  
Rules and regulations generally, § 1-226 and notes.

## § 45-1404 [20: 1973]. Qualifications for license.

No license under the provisions of this chapter shall be issued to any person who has not attained the age of twenty-one years, nor to any person who cannot read, write, and understand the English language; nor until the Commission has received satisfactory proof that the applicant is trustworthy and competent to transact the business of a real-estate broker or real-estate salesman or business-chance broker or business-chance salesman in such a manner as to safeguard the interests of the public: *Provided, however*, That a salesman shall have six months from the date of the issuance of his original license to prove his competency, and failure to prove his competency to the satisfaction of the Commission within that period will automatically cancel his original license or any renewal thereof.

In determining competency, the Commission shall require proof that every applicant for a license has a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this chapter; and that an applicant for a license as a real-estate broker has a fair understanding of the general purposes and effect of deeds, mortgages, and contracts for the sale or leasing of real estate, and of elementary real-estate practices; and that an applicant for a license as a business-chance broker has a fair understanding of the general purposes and effect of bills of sale, chattel mortgages and trusts, and the provisions of the law governing sales in bulk.

No license shall be issued to any person, firm, partnership, copartnership, association, or corporation whose application has been rejected in the District of Columbia or any State within three months prior to date of application, or whose real-estate license has been revoked in the District of Columbia or any State within one year prior to date of application. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 4; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 5.)

## AMENDMENT

The 1939 amendment added the words "or business-chance broker or business-chance salesman" and the proviso in the first paragraph; rearranged the wording of the first part of the second paragraph and added the words beginning "and that an applicant," the second time the said words appear, and concluding the said paragraph.

## CROSS REFERENCE

Disqualification for conviction of crime, § 45-1415.

§ 45-1405 [20: 1974]. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

Every applicant for a license under the provisions of this chapter shall apply therefor in writing upon blanks furnished by the Real Estate Commission.

The application of every person for a real-estate broker's license or a real-estate salesman's license shall be accompanied by the recommendation of at least two residents of the District of Columbia, real-estate owners, who have owned real estate in the District of Columbia for a period of at least one year and who are not related to the applicant but who have personally known the applicant for a period of at least six months prior to the date of application, which recommendation shall certify that the applicant bears a good reputation for honesty, truthfulness, fair dealing, and competency, and recommend that a license be granted to the applicant.

The application of every firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the location of the place or places for which said license is desired and set forth the period of time, if any, which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period. Such applications shall also state the name and residence of each individual member or officer of said applicant who actively participates in the brokerage business thereof.

The application of every individual member or officer of a firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the full name and residence address of the applicant and the full name and business address of the firm, partnership, copartnership, association, or corporation with which he is or will be associated, the length of time he has been so associated, and in what capacity. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period.

The application of each person for an individual real-estate broker's license shall state the full name of the applicant, his business address, and residence address. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period.

The application of every person for a real-estate salesman's license shall state the full name of the



applicant, his residence address, and the name and business address of the real-estate broker by whom he is or will be employed. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period. Such application shall be accompanied by a written statement by the broker by whom the applicant is employed or is about to be employed, stating that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the license be granted to the applicant.

Every application for a license under the provisions of this chapter shall be sworn to by the applicant and shall be accompanied by the license fee herein prescribed. In the event that the Commission does not approve the application for a license the fee shall be returned to the applicant.

Every application for a license shall be accompanied by a bond in the sum of \$2,500 in the case of a broker and \$1,000 in the case of a salesman, running to the District of Columbia executed by a surety company duly authorized to do business in the District of Columbia: *Provided, however,* That no bond shall be required of any firm, partnership, copartnership, association, or corporation when the application of every member or officer of such firm, partnership, copartnership, association, or corporation actively participating in the brokerage business thereof is accompanied by a bond as provided for in this section. Said bond shall be in form approved by the Commission, and conditioned that the applicant shall conduct himself and his business in accordance with the requirements of this chapter; and for his failure so to do any person aggrieved thereby shall have, in addition to his right of action against the principal thereof, a right to bring suit against the surety on said bond either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, representation, transaction, or conduct of the principal which may be prohibited by this chapter or enumerated as one of the causes for suspension or revocation of a license granted hereunder. If a recovery be had on any bond the licensee shall restore the bond to its original amount.

Nothing in this chapter shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

No suit or action against the surety on any such bond shall be brought later than one year from the accrual of the cause of action thereon. The surety may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Commission; and upon giving such notice the surety shall be discharged from all liability under

such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Commission.

In the event the surety becomes insolvent or a bankrupt, or ceases to do business or ceases to be authorized to do business in the District of Columbia, the principal shall, within ten days after notice thereof, given by the Commission, duly file a new bond in like amount and conditioned as the original and if the principal shall fail so to do the license of such principal shall terminate.

The Commission, with due regard to the paramount interest of the public, may require other reasonable proof of the honesty, truthfulness, and integrity of the applicant. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 5; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 6.)

#### AMENDMENT

The 1939 amendment deleted the words "executed by two good and sufficient sureties to be approved by the Commission, or" following the word "Columbia" as said word first appears in the eighth paragraph; and, added the eleventh paragraph.

#### CROSS REFERENCE

Refund of fees generally, § 47-1018.

#### § 45-1406 [20: 1975]. Procedure when license refused.

The Commission, after an application in proper form has been filed, shall, before refusing to issue a license, set the application down for a hearing and determination as provided in section 45-1409. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 6.)

#### § 45-1407 [20: 1976]. Details relating to license.

The Commission shall cause to be issued to each licensee a license in such form and size as shall be prescribed by the Commission. Every license shall show the name and address of the licensee, and if licensee is a member or officer of a firm, partnership, copartnership, association, or corporation, the full name and address of such firm, partnership, copartnership, association, or corporation shall also be shown on said license. Licenses issued to real-estate salesmen shall in addition show the name and address of the real-estate broker by whom the said salesmen is or will be employed. Each license shall have imprinted thereon the seal of the Commission, and in addition to the foregoing shall contain such matter as shall be prescribed by the Commission. The license of each real-estate salesman shall be delivered or mailed to the real-estate broker by whom such real-estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real-estate broker to conspicuously display his license in his place of business.

At any time within six [6] months, but not thereafter, after the issuance of an original license the Commission may, upon its own motion, and shall,



upon the verified complaint, in writing, of any person, provided such complaint, or such complaint together with evidence, documentary or otherwise, presented therewith, shall make out a prima facie case that the licensee is unworthy to hold such license, notify the licensee, in writing, that the question of his honesty, competency, truthfulness, and integrity will be reopened and determined de novo. Such written notice may be served by delivery thereof personally to the licensee or by mailing same by registered mail to the last known business address of the licensee. Thereupon the Commission may require and procure further proof of the licensee's trustworthiness and competency, and if such proof shall not be satisfactory such license shall be recalled and shall thereafter be null and void. Upon the recall of any such license it shall be the duty of the licensee to surrender to the Commission such license.

The fee for an original broker's license and every renewal thereof shall be \$30: *Provided, however,* That the fee for an original broker's license and every renewal thereof for individual members, partners, and officers of firms, partnerships, and corporations shall be \$30 for the first member, partner, or officer to be designated by the firm, partnership, or corporation and \$10 for each additional member, partner, or officer of such firm, partnership, or corporation.

No fee shall be charged for any original license or renewal thereof issued to any firm, partnership, copartnership, association, or corporation all of whose members or officers actively participating in the brokerage business thereof have been issued a broker's license.

The fee for an original real-estate salesman's license and every annual renewal thereof shall be \$10.

The fees provided herein for any original license shall be reduced by one-half in all cases where the application for such original license is filed between January 1 and July 1 of any year.

Every license shall expire on the 1st day of July of each year, except that the original or initial licenses, first issued under the provisions of this chapter shall expire on the 1st day of July, 1938, subject, however, to revocation as hereinbefore provided.

The Commission shall cause to be issued a new license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written request of the applicant and the annual fee therefor, as herein required: *Provided, however,* That an applicant who, on or before July 1, fails to file said written request and pay the annual fee must comply with all the provisions of this chapter applicable to an original applicant except that the Commission may waive the requirement of furnishing proof of competency. The revocation of a broker's license shall automatically suspend every salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the

same license year in which the original license is granted.

No person, firm, partnership, copartnership, association, or corporation engaged in the business or acting in the capacity of a real-estate broker or a real-estate salesman, or a business-chance broker or a business-chance salesman, within the District of Columbia shall bring or maintain any action in the courts of the District of Columbia for the collection of compensation for any services performed as a real-estate broker or a real-estate salesman or a business-chance broker or business-chance salesman, or enforcement of any contract relating to real estate without alleging and proving that such person, firm, partnership, copartnership, association, or corporation was a duly licensed real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, at the time the alleged cause of action arose.

Every broker licensed hereunder shall maintain a place of business in the District of Columbia. If a broker maintains more than one place of business within the District of Columbia, a duplicate license shall be issued to such broker for each branch office maintained; and there shall be no fee charged for any such duplicate license.

When a broker changes the location of his principal place of business he must immediately notify the Commission in writing and return to the Commission his license together with the licenses of all salesmen in his employ, and the Commission shall issue a new license to the broker and to each of the salesmen without charge. Failure to notify the Commission and to return his license when the location of his principal place of business is changed, will automatically cancel the broker's license and the licenses of all salesmen in his employ. However, new licenses for the unexpired term may be issued by the Commission without the payment of any additional fee, provided a written request therefor accompanied by a new bond is filed.

When any real-estate salesman shall be discharged or shall terminate his employment with the real-estate broker by whom he is employed it shall be the duty of such real-estate broker to immediately deliver or mail by registered mail to the Commission such real-estate salesman's license. The real-estate broker shall at the time of delivering or mailing such real-estate salesman's license to the Commission, address a communication by registered mail to the last-known residence address of such real-estate salesman, which communication shall advise such real-estate salesman that his license has been delivered or mailed to the Commission. A copy of such communication to the real-estate salesman shall accompany the license when mailed or delivered to the Commission. It shall be unlawful for any real-estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after three days following such delivery or mailing of the said license by said broker to the Commission.

When a salesman shall be discharged or shall terminate his employment with the broker by whom he is employed, it shall be the duty of such salesman



to immediately notify the Commission, and it shall be unlawful for him to perform any of the acts contemplated by this chapter either directly or indirectly from and after such termination of employment until such time as he has been employed by another licensed broker and a license has been reissued him by the Commission.

There shall be no additional fee for the reissuance of a salesman's license necessitated by the change of employers nor shall such change work a revocation or require a renewal of the salesman's bond.

A license issued to an individual cannot be transferred to another individual. However, an individual licensed as a broker may, upon written request to the Commission, change his status to that of an individual broker or to that of a partner of a partnership, or to that of an officer of a corporation, for any unexpired term of his license, without the payment of any additional fee, and such change shall not work a revocation or require a renewal of the bond of any such broker. This provision shall not be applicable to any real-estate broker in respect to a change of license to that of a business chance broker or vice versa.

No license shall be issued to any firm, partnership, association, or corporation unless every individual member, partner or officer of such firm, partnership, association, or corporation who actively participates in the brokerage business thereof is licensed as a broker. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 7; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 7.)

#### AMENDMENT

The 1939 amendment deleted the figure "\$50" and inserted in lieu thereof the figure "\$30," and added the rest of the third paragraph; added the sixth paragraph; added the proviso on the end of the first sentence of the eighth paragraph; added the words "or a business-chance broker or a business-chance salesman" as they appear in the ninth paragraph; deleted the words "real estate" as they appeared in the 1937 act as the second and third words of the first sentence and the third and fourth words of the second sentence of the tenth paragraph; reworded the eleventh paragraph to provide as it now appears, the former paragraph having provided that notice be given "by each licensee" and not having provided for a new bond; and, added the thirteenth, fifteenth, and sixteenth paragraphs.

#### CROSS REFERENCES

Refund of fees, § 45-1403 and notes.

Revocation or suspension of licenses, § 45-1408.

§ 45-1408 [20: 1977]. Suspension or revocation of license—Causes enumerated.

The Commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case, investigate the conduct of any real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee, in performing or attempting to perform any of the acts mentioned herein, has—

(a) Made any substantial misrepresentation;

(b) Made any false promises of a character likely to influence, persuade, or induce;

(c) Pursued a continued and flagrant course of misrepresentation, or making of false promises through agents or salesmen, or advertising or otherwise;

(d) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(e) Accepted a commission or valuable consideration as a real-estate salesman or as a business-chance salesman for the performance of any of the acts specified in this chapter from any person, except the broker under whom he is licensed;

(f) Represented or attempted to represent a real-estate broker or a business-chance broker other than the employer, without the express knowledge and consent of the employer;

(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

(h) Demonstrated such unworthiness or incompetency to act as a real-estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interests of the public;

(i) While acting or attempting to act as agent or broker, purchased or attempted to purchase any property or interest therein for himself, either in his own name or by use of a straw party, without disclosing such fact to the party he represents;

(j) Been guilty of any other conduct, whether of the same or a different character from that hereinbefore (prior to Aug. 25, 1937) specified, which constitutes fraudulent or dishonest dealing;

(k) Used any trade name or insignia of membership in any real-estate organization of which the licensee is not a member;

(l) Disregarded or violated any provisions of this chapter;

(m) Guaranteed or authorized or permitted any broker or salesman to guarantee future profits which may result from the resale of real property, or a business, business opportunity, or the goodwill of any existing business;

(n) Placed a sign on any property offering it for sale or for rent or offering it for sale or rent without the written consent of the owner or his authorized agent;

(o) Accepted a compensation from more than one party to a transaction without the knowledge of all the parties to the transaction; or

(p) Failed to restore the bond to its original amount after a recovery on the bond as provided in section 45-1405. (Aug. 25, 1937, 50 Stat. 793, ch. 760, § 8; Aug. 10, 1939, 53 Stat. 1356, ch. 664, § 8.)

#### AMENDMENT

The 1939 amendment added the words "or business-chance broker or business-chance salesman" in the first paragraph; added the words "or as a business-chance salesman," and deleted the words "except an employer who is a licensed real-estate broker" and inserted in lieu thereof the last eight words in paragraph (e); added the word "or a business-chance broker" in paragraph (f); deleted the word "salesman" and inserted in lieu thereof



the words "real-estate salesman or a business-chance broker or a business-chance salesman" in paragraph (h); inserted paragraph (i) in lieu of the former paragraph which read, "Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this act, with knowledge of such violation or where reasonable diligence has not been exercised to acquire such knowledge;" added the words "or a business, business opportunity, or the goodwill of any existing business" at the end of paragraph (m); changed the verbs in paragraph (m) and (n) from the present to the past participle; and, inserted paragraph (o) in lieu of the former paragraph which read, "Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property." (See second paragraph of § 45-1414 added thereto by the 1939 act which made this deletion.)

## CROSS REFERENCES

Recall of license, § 45-1407.

Revocation of license for conviction of crime, § 45-1415.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33-418.

**§ 45-1409 [20: 1978]. Hearing before suspension—Court review—Appeal.**

The Commission shall, before denying an application for license, or before suspending or revoking any license, set the matter down for a public hearing, and at least ten days prior to the date set for the hearing it shall notify the applicant or licensee in writing of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee or by mailing same by registered mail to the last-known business address of such applicant or licensee. If said applicant or licensee be a salesman the Commission shall also notify the broker employing him, or whose employ he is about to enter, by mailing notice by registered mail to the broker's last-known address. The hearing on such charges shall be at such time and place as the Commission shall prescribe. The Commission shall have the power to issue subpoenas or take testimony of any person by deposition in the same manner as prescribed by law in judicial procedure in the District Court of the United States for the District of Columbia in civil cases. It shall also have the power to require the production of books, records, papers, and documents by subpoena or otherwise. Any party to any hearing before the Commission shall have the right to the attendance of witnesses in his behalf at such hearing upon making request therefor to the Commission and designating the person or persons sought to be subpoenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the Commission shall determine that any licensee is guilty of a violation of any of the provisions of §§ 45-1401 to 45-1418 this chapter, his or its licenses shall be suspended or revoked. All evidence before and findings of fact made by the Commission and questions of law involved in any final decision or determination of the Commission shall be subject to review by the District Court of the United States for the District of Columbia upon a writ of certiorari, mandamus, appeal, or by any other method permissible

under the rules and practices of said court or the laws of the District of Columbia, and the said court may make such further orders with respect thereto as justice may require: *Provided, however,* That application is made by the aggrieved party to the court within thirty days after any determination by the Commission or within sixty days after formal request shall be made upon it for action. Such application shall operate as a stay of any action or finding of the Commission revoking or suspending a license, and until final decision by the District Court of the United States for the District of Columbia such licensee shall have the right to continue in business.

An appeal may be taken from the judgment of the said court on any such appeal on the same terms and conditions as an appeal is taken in civil actions.

Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes, upon the payment to the Commission of such reasonable fee as it shall, by general rule or regulation, prescribe. (Aug. 25, 1937, 50 Stat. 794, ch. 760, § 9.)

## CROSS REFERENCE

Rules and regulations generally, § 45-1403 and note.

**§ 45-1410 [20: 1979]. Provisions applicable to nonresident brokers and salesmen.**

A nonresident of the District of Columbia may become a real-estate broker or a real-estate salesman in the District of Columbia by conforming to all of the conditions of this chapter, except that the application of such person for a license need not be accompanied by the recommendation of real-estate owners in the District of Columbia prescribed in paragraph 2 of section 45-1405, but in lieu thereof the Commission shall require the filing of like recommendations by similarly qualified real-estate owners of property in the state, territory, or county of such applicant's residence, and with the further exception that a nonresident of the District of Columbia need not maintain a place of business within the District of Columbia if he is licensed in and maintains a place of business in the state in which he resides.

(2) The Commission may recognize, in lieu of the recommendation and statements otherwise required by this chapter to accompany an application for a license, the valid and existing license issued to a nonresident to act as a real-estate broker or salesman by any state having a law for the licensing of such brokers and salesmen similar to this chapter, upon payment of the license fee prescribed by this chapter and the filing by the applicant with the commission of a duly authenticated copy of applicant's license issued by such state: *Provided, however,* That every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of the District of Columbia by the service of any process or pleadings authorized by the laws of the United States applying to the District of Columbia on the secretary of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due or personal service had been made upon said applicant in the District of Columbia. Said instrument contain-



ing such consent shall be duly acknowledged and if made by a corporation shall be authenticated by the seal thereof. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in this chapter are served upon the secretary of the Commission, it shall be by duplicate copies, one of which shall be filed in the office of the Commission and the other immediately forwarded by registered mail to the residence address given by the applicant against which said process or pleadings are directed: *And provided further*, That every nonresident of the District of Columbia shall file a bond in form and contents the same as is required of applicants under section 45-1405. (Aug. 25, 1937, 50 Stat. 795, ch. 760, § 10; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 9.)

#### AMENDMENT

The 1939 amendment added the words beginning "and with the further" and concluding the first paragraph.

#### § 45-1411 [20: 1980]. Power to obtain evidence.

Each member of the Commission and its duly authorized representatives may administer oaths to witnesses.

In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may lawfully be interrogated, the District Court of the United States for the District of Columbia, or any judge thereof, on application of any member of the Commission, shall issue an order requiring such person to comply with such subpoena and to testify or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 11.)

#### § 45-1412 [20: 1981]. Further exemptions—Exceptions.

It shall not be necessary for any trustee or auctioneer acting under authority of a power of sale in a mortgage, deed of trust, or similar instrument securing the payment of a bona fide debt nor any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, organized under the laws of the United States, when engaged in the transaction of business within the scope of its corporate powers and provided by law, to obtain a license under this chapter.

The exemption contained in this section shall not apply to any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, which for another and for a compensation, performs any of the acts defined herein as the acts of a real-estate broker or business-chance broker in connection with any property, wherein such bank, trust company, building and loan association, insurance company, land-mortgage or farm-loan association has no fiduciary interest such as receiver, referee, administrator, executor, guardian, or trustee. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 12; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 10.)

#### AMENDMENT

The 1939 amendment added the second paragraph.

#### CROSS REFERENCE

Other exemptions, § 45-1402.

#### § 45-1413 [20: 1982]. List of licensees to be published.

The Commission shall publish at least annually a list of the names and addresses of all licensees licensed by it under the provisions of this chapter and of all persons whose license has been suspended or revoked within one year, together with a succinct report of its work during the year. Such list shall be mailed by the Commission to any person in the District of Columbia upon request. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 13.)

#### § 45-1414 [20: 1983]. Fraudulent transfers or loans.

It shall be unlawful for any person, firm, association, partnership, or corporation to enter into or become a party to any contract, agreement, or understanding, or in any manner whatsoever to consider, combine, conspire, or act with another or others, (a) to execute a deed conveying real property in the District of Columbia that is not a bona fide sale but is instead a simulated sale of such property executed for the purpose and with the intent of misleading others as to the value of such property, and which in fact does so mislead and/or defraud others, to their detriment; or (b) to execute a mortgage or deed of trust upon real property situated in the District of Columbia that does not in fact represent security for a bona fide indebtedness, but which is in reality a simulated transaction, executed for the purpose and with the intent of misleading or deceiving others as to the value of the property and which does mislead, deceive, or defraud others to their detriment.

It shall be unlawful within the District of Columbia for any person, firm, partnership, association, or corporation, foreign or domestic, either as owner or otherwise, to offer, give, award, or promise, or to use any method, scheme or plan offering, giving, awarding, or promising free lots in connection with the sale or the offering for sale or an attempt to sell or negotiate the sale of any real estate or interest therein, wherever situated, for the purpose of attracting, inducing, persuading, or influencing a purchaser or a prospective purchaser; or to offer, promise, or give prizes of any name or nature for attendance at or participation in any sale of real estate, by auction or otherwise.

It shall be unlawful for any person, firm, partnership, association, or corporation knowingly to pay a fee, commission, or compensation to anyone for the performance within the District of Columbia of any service or act defined in this chapter as the act of a real-estate broker, real-estate salesman, business-chance broker, or business-chance salesman, who was not duly licensed as such at the time such service or act was performed: *Provided*, That this paragraph shall not apply to the division of commission by a broker licensed hereunder with a nonresident cooperating broker. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 14; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 11.)



AMENDMENT

The 1939 amendment added the second and third paragraphs.

**§ 45-1415 [20: 1934]. License revoked on conviction of crime.**

Where during the term of any license issued by the Commission the licensee shall be convicted in a court of competent jurisdiction in the District of Columbia or any State (including Federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the Commission, the Commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted.

In the event that any licensee shall be indicted in the District of Columbia or any State or Territory (including Federal courts) for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or like offense or offenses, and a certified copy of the indictment be filed with the Commission, or other proper evidence thereof be to it given, the Commission shall have authority, in its discretion, to suspend the license issued to such licensee pending trial upon such indictment.

No license shall be issued by the Commission to any person known by it to have been, within five years theretofore, convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses, or to any copartnership of which such person is a member, or to any association or corporation of which said person is an officer, director, or employee, or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly. In the event of the revocation or suspension of the license issued to any member of a copartnership, or to any officer of an association or corporation, the license issued to such copartnership, association, or corporation, shall be revoked by the Commission, unless, within a time fixed by the Commission, where a copartnership, the connection therewith of the member whose license has been revoked shall be severed and his interest in the copartnership and his share in its activities brought to an end, or where an association or corporation, the offending officer shall be discharged and shall have no further participation in its activity. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 15.)

CROSS REFERENCE

Revocation or suspension of license generally, § 45-1408 and notes.

**§ 45-1416 [20: 1985]. Penalties—Prosecutions.**

Any person or corporation violating any provision of this chapter shall upon conviction thereof, if a person, be punished by a fine of not more than \$500, or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and, if a corporation, be punished by a fine of not more than \$1,000. Any officer, director, employee, or agent of a corporation, or member, employee, or agent of a firm, partner-

ship, copartnership, or association, who shall personally participate in or be accessory to any violation of this chapter by such firm, partnership, copartnership, association, or corporation, shall be subject to the penalties herein prescribed for individuals.

This chapter shall not be construed to release any person, partnership, association, or corporation from civil liability or criminal prosecution under the laws applying to the District of Columbia.

All prosecutions for violation of this chapter shall be begun in the police court of the District of Columbia in the name of the District of Columbia and under the direction and charge of the corporation counsel of the District of Columbia. The corporation counsel of the District of Columbia and his assistants shall also be counsel for the Commission in all suits to which it may be a party, and shall advise the Commission and at its request attend any and all hearings which it may hold in the performance of its duties hereunder. (Aug. 25, 1937, 50 Stat. 797, ch. 760, § 16.)

**§ 45-1417 [20: 1985a]. Bond required for renewal of licenses.**

No license heretofore issued under the authority of this chapter, where the application therefor was accompanied by a bond which does not conform with the requirements of said chapter as amended hereby, shall be reissued or renewed unless the application for such reissuance or renewal shall be accompanied by a bond in accordance with this chapter as amended by this Act. (Aug. 10, 1939, 53 Stat. 1358, ch. 664, § 12.)

COMPILER'S NOTE

The words "This Act" refer to the act of August 10, 1939, cited to the text of the various sections of this chapter which it amends.

**§ 45-1418 [20: 1986]. Saving clause.**

If any section, subsection, sentence, clause, phrase, or requirement of this chapter is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions thereof. The Congress of the United States hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause, phrase, and requirement thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or requirements be declared unconstitutional or invalid. (Aug. 25, 1937, 50 Stat. 798, ch. 760, § 17.)

Chapter 15.—OWNERSHIP BY ALIENS

Sec.

- 45-1501. Ownership of real estate by aliens.
- 45-1502. Real estate—Ownership by alien individuals or corporation.
- 45-1503. Corporations controlled by aliens.
- 45-1504. Forfeiture.
- 45-1505. Ownership by foreign governments or representatives.

**§ 45-1501. Ownership of real estate by aliens.**

The act entitled "An Act to better define and regulate the rights of aliens to hold and own real estate in the Territories," approved March 2, 1897, be, and the same is hereby, amended so as to extend to aliens the same rights and privileges concerning the acqui-



sition, holding, owning, and disposition of real estate in the District of Columbia as by that act are conferred upon them in respect of real estate in the Territories of the United States. All laws and parts of laws so far as they conflict with the provisions of this section are hereby repealed. (February 23, 1905, 33 Stat. 733, ch. 733.)

#### STATUTORY REFERENCES

The act of Congress above referred to appears in the United States Code as §§ 71-77 of Title 8.

The act of Oct. 14, 1940, 54 Stat. 1171, ch. 876, § 503 (U. S. C., Supp., Title 8, § 903) reads as follows: "If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the District in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. \* \* \*

#### CROSS REFERENCE

Heirship, § 18-110.

#### § 45-1502. Real estate—Ownership by alien individuals or corporation.

It shall be unlawful for any person not a citizen of the United States or who has not lawfully declared his intention to become such citizen, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire and own real estate, or any interest therein, in the District of Columbia, except such as may be acquired by inheritance: *Provided*, That the prohibition of this section shall not apply to cases in which the right to hold and dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they exist by force of any such treaties, shall continue to exist so long as such treaties are in force, and no longer, and shall not apply to the ownership of foreign legations or the ownership of residences by representatives of foreign governments or attachés thereof. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 396.)

#### COMPILER'S NOTE

This section has been modified as to alien individuals by the act of Feb. 23, 1905, 33 Stat. 733, ch. 733.

#### § 45-1503. Corporations controlled by aliens.

No corporation or association of which over fifty per centum of the stock is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States shall hereafter acquire or own any real estate hereafter acquired in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 397; June 30, 1902, 32 Stat. 530, ch. 1329.)

#### AMENDMENT

Act of March 3, 1901, was amended by striking out the words "more than twenty" and inserting in lieu thereof the words "over fifty."

#### § 45-1504. Forfeiture.

All property acquired or held or owned in violation of the provisions of this chapter shall be forfeited to the United States, and it shall be the duty of the United States attorney for the District to enforce every such forfeiture by bill in equity or other proper process. And in every such suit or proceeding that may be commenced to enforce the provisions of this chapter it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the other parties concerned. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 398.)

#### § 45-1505. Ownership by foreign governments or representatives.

An act entitled "An Act to restrict the ownership of real estate in the Territories to American citizens, and so forth," approved March 3, 1887, be so amended that the same shall not apply to or operate in the District of Columbia, so far as relates to the ownership of legations, or the ownership of residences by representatives of foreign governments, or attaches thereof. (Mar. 9, 1888, 25 Stat. 45, ch. 30.)

#### STATUTORY REFERENCE

See U. S. C., title 8, § 82.







## TITLE 46.—SOCIAL SECURITY

Chap.	Sec.	
1. Care of blind.....	46-101	
2. Old-age assistance.....	46-201	
3. Unemployment compensation.....	46-301	

### Chapter 1.—CARE OF BLIND

Sec.	
46-101.	Relief for blind persons—Commissioners to enforce provisions for—Agency.
46-102.	Inmate of institution applying for relief—Definition of "needy blind person."
46-103.	Eligibility for aid—Age—Residence—Liability of relatives for.
46-104.	Application for aid—Affidavit—Contents.
46-105.	Evidence of blindness—Amount of aid—Appeal from agency.
46-106.	Aid to blind person—Increase or decrease of allowance—Appeal—Aid pending appeal.
46-107.	Blind person receiving aid not to solicit alms.
46-108.	Aid to blind person to cease on removal from District of Columbia—Temporary absence.
46-109.	Refusal to work—Refusal to submit to treatment.
46-110.	No benefits when intentional destruction of eyesight—Loss of eyesight through crime or vicious habits.
46-111.	Liability of relatives for aid to blind person—Agency authorized to recover amount paid.
46-112.	Deduction of aid to blind persons from estates of assisted persons—Transfer of property to board or agency as security.
46-113.	Penalty for fraud in obtaining allowance for blind person.
46-114.	Appropriation for—Accounts—Appointment of one to stand in loco parentis.
46-115.	Board of Commissioners—Cooperation with Social Security Board.
46-116.	Care for blind—Liberal construction—Saving clause.

#### § 46-101 [8: 251]. Relief for blind persons—Commissioners to enforce provisions for—Agency.

The Board of Commissioners of the District of Columbia (hereinafter called the "Board") is hereby authorized and directed to enforce the provisions of this chapter for the purpose of maintaining, supporting, and caring for needy blind persons who are residents of the said District of Columbia, citizens of the United States, and not inmates of any institution supported in whole or in part by the Federal or District Governments, and said Board shall have the power to make and enforce all proper rules and regulations therefor, including the definitions of "blindness" and of "needy individuals" and the power to make and require any reports required by the Federal Social Security Board or otherwise authorized or required by law. The said Board may entrust the carrying out of the provisions of this chapter, or any of them, to any agency of the government of the District of Columbia which said Board may designate. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 1.)

#### CROSS REFERENCES

Rules and regulations generally, § 1-226 and notes.  
 Rules and regulations regarding care and management of pensioners' property, § 46-112.

#### § 46-102 [8: 252]. Inmate of institution applying for relief—Definition of "needy blind person."

As used in this chapter, the term "needy blind person" shall be construed to mean any person who by reason of the loss or impairment of eyesight is of such condition that he can not be rehabilitated for self-support through the facilities offered by the Vocational Rehabilitation Service for the District of Columbia, United States Office of Education, and who is unable to provide himself with the necessities of life and who has not sufficient means of his own to maintain himself and who is otherwise qualified as further set forth in this chapter, and nothing in this chapter shall prevent any blind person in sound mental and physical condition who is an inmate of an institution for the care of the indigent from applying for the benefits under this chapter on the condition that they leave such institution upon the granting of such relief. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 2.)

#### § 46-103 [8: 253]. Eligibility for aid—Age—Residence—Liability of relatives for.

In order that any person who shall have become blind while a resident of the District of Columbia may be entitled to aid under the provisions of this chapter such person must be at least sixteen years of age and a resident of the District of Columbia for one year next preceding his application for aid hereunder: *Provided*, That in order that any person whose blindness originated while he was not a resident of the District of Columbia may be entitled to aid hereunder, such person must be at least twenty-one years of age and must have been a bona fide resident of the District of Columbia for a period of five years during the nine years immediately preceding the filing of his application for aid hereunder and must have resided in the District of Columbia continuously for at least one year immediately preceding the date of the application: *And provided further*, That nothing in this chapter shall be construed to repeal or render void, so far as blind persons are concerned, any existing statutes which create or define a liability on the part of certain persons to support and provide for poor relatives. (Aug. 24, 1935, 49 Stat. 744, ch. 639, § 3.)

#### § 46-104 [8: 254]. Application for aid—Affidavit—Contents.

To receive aid under this chapter, the applicant shall file his application with the Board or its designated agency, accompanied by an affidavit signed by himself stating his age, sex, places of residence during the period stipulated in the District of Columbia, his financial resources, and incomes, the name and address of his next of kin, degree of blindness, how long blind, what employment he has had, his general physical condition, and such other information



as the Board or its designated agency may designate. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 4.)

**§ 46-105 [8: 255]. Evidence of blindness—Amount of aid—Appeal from agency.**

No aid shall be granted hereunder until the board or its designated agency is satisfied from the evidence of at least two reputable citizens of the District of Columbia that they know the applicant has the residential qualifications to entitle him to the aid asked for, and from the evidence of a duly licensed and practicing oculist whose duty it shall be to describe the condition of the applicant's eyes and to testify to his blindness, which evidence shall be in writing subscribed to by such witnesses, subject to the right of cross-examination by either the Board or its designated agency; and if the Board or its designated agency is satisfied by such testimony that the applicant is entitled to aid hereunder, it shall, without delay, allow such sum as it finds needed: *Provided*, That no aid shall be furnished any individual with respect to any period with respect to which he is receiving old-age assistance: *Provided further*, That in the case of a blind dependent child living with its parents or parent such aid shall not exceed \$30 per month: *And provided further*, That any agency designated by the Board hereunder shall transmit to the Board a record of its actions in granting or refusing to grant aid to each blind applicant, and any blind applicant who is dissatisfied with the finding of such agency regarding his application for aid, may appeal to the Board who shall grant such applicant a full hearing, after reasonable notice, and shall then consider the application; and, if a majority of the Board in attendance at a meeting at which a quorum is present shall find that the applicant is entitled to aid under the provisions of this chapter, they shall then and there award such aid as they deem proper. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 5.)

**§ 46-106 [8: 256]. Aid to blind person—Increase or decrease of allowance—Appeal—Aid pending appeal.**

The Board or its designated agency shall investigate annually, or oftener, the qualifications of blind persons who receive aid hereunder, and may increase or decrease the allowance within the limits prescribed by this chapter; or if said designated agency is satisfied that any person receiving aid under this chapter is not entitled to such aid, it shall discontinue such aid and shall forthwith notify such person and the Board of such action: *Provided, however*, That the person receiving such aid may take an appeal to the Board from such action as if it were an original application for aid: *And provided further*, That such an appeal must be filed within sixty days from the notification by the designated agency to the beneficiary hereunder of the intended reduction or discontinuance of aid. If any such appeal be filed, the said aid shall be restored pending the findings of the board on said appeal. (Aug. 24, 1935, 49 Stat. 745, ch. 639, § 6.)

**§ 46-107 [8: 257]. Blind person receiving aid not to solicit alms.**

No persons shall be eligible to receive aid under the provisions of this chapter who, after receiving

said aid publicly solicits alms in any manner, either by wearing, carrying, or exhibiting signs denoting blindness for the securing of alms, or by any signs calling attention to blindness exhibited on wares and merchandise, or the carrying of receptacles for the purpose of securing alms, or the doing of the same by proxy or by stationary or house-to-house begging, or any other means of publicly securing aid. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 7.)

**§ 46-108 [8: 258]. Aid to blind person to cease on removal from District of Columbia—Temporary absence.**

Any person qualifying for and receiving aid hereunder who removes himself from the jurisdiction of the District of Columbia and thereby ceases to be a resident shall no longer be entitled to the benefits and aid under the provisions of this chapter. Absence for a reasonable length of time, as designated by the Board, shall not work a forfeiture hereunder. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 8.)

**§ 46-109 [8: 259]. Refusal to work—Refusal to submit to treatment.**

The benefits hereof shall not be granted to any person between the ages of sixteen and fifty-five years who, having no occupation and being both physically and mentally capable of some useful occupation, or of receiving vocational or other training, refuses for any reason to engage in such useful occupation, or refuses to avail himself of such vocational or other training: *Provided*, That no person shall be entitled to the benefits of this chapter who shall refuse to submit to any treatment or operation for blindness when such treatment or operation is recommended by three examining oculists and approved by the Board or its designated agency. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 9.)

**§ 46-110 [8: 260]. No benefits when intentional destruction of eyesight—Loss of eyesight through crime or vicious habits.**

No person shall be eligible to the benefits of this chapter who shall hereafter either intentionally deprive himself of his eyesight or assist in the destruction thereof by others; or hereafter shall lose his eyesight during the perpetration of a criminal offense; or shall hereafter lose his eyesight by reason of vicious habits. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 10.)

**§ 46-111 [8: 261]. Liability of relatives for aid to blind person—Agency authorized to recover amount paid.**

The kindred of any person otherwise entitled to aid under the provisions of this chapter, in line and degree of spouse, father, child, or grandchild, living in the District of Columbia and of sufficient ability so to do shall be bound to support such person, in the order above named and in proportion to their respective ability. If at any time during the continuance of aid the Board of Commissioners, or its designated agency has reason to believe that a spouse, father, child, or grandchild is reasonably able to assist him, it shall be empowered to bring suit, after notifying such person of the amount of such aid, against such spouse, father, child, or grandchild to



recover the amount of such aid provided under this chapter, or such part thereof as such spouse, father, child, or grandchild was reasonably able to pay. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 11.)

**§ 46-112 [8:262]. Deduction of aid to blind persons from estates of assisted persons—Transfer of property to Board or agency as security.**

At the death of a recipient of aid under this chapter, or of the last survivor of a married couple either one of whom have received aid, the total amount of aid since the first grant, together with simple interest at the rate of 3 per centum per annum, shall be deducted and allowed by the proper courts out of the proceeds of his property as a preferred claim against the estate of the person so assisted, and refunded to the Treasurer of the United States to the credit of the District of Columbia, leaving the balance for distribution among the lawful heirs in accordance with law: *Provided*, That upon sufficient cause, such as mismanagement, failure to keep in repair, or the inability of any recipient of aid properly to manage his property, the designated agency of the Board may demand the assignment or transfer of such property, or a proper part thereof, upon the first grant of such aid, or at any time thereafter that it deems advisable for the purpose of safeguarding the interest of any applicant or for the protection of the funds of the District of Columbia. Such agency shall establish such rules and regulations regarding the care, management, transfer, and sale of such property as it deems advisable and shall provide for the return of the balance of the claimant's property into his hands whenever the assistance is withdrawn or the claimant ceases to request it. (Aug. 24, 1935, 49 Stat. 746, ch. 639, § 12.)

**CROSS REFERENCE**

Rules and regulations generally, § 46-101.

**§ 46-113 [8:263]. Penalty for fraud in obtaining allowance for blind person.**

Any person who attempts to obtain, or obtains, by false representation, fraud, or deceit, any allowance under this chapter, or who receives any allowance knowing it to have been fraudulently obtained, or who aids or assists any person in obtaining or attempting to obtain an allowance by fraud, shall upon conviction in the police court of the District of Columbia be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 13.)

**§ 46-114 [8:264]. Appropriation for — Accounts — Appointment of one to stand in loco parentis.**

In order to carry out the provisions of this chapter there is authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of \$75,000, payable from the revenues of the District of Columbia, and for the fiscal year ending June 30, 1937, and annually thereafter, the Commissioners of the District of Columbia shall include in the estimate of appropriations for said District of Columbia, such an amount as may be necessary for this purpose; and the Board shall assign such personnel in the employ of the District of Columbia as

may be necessary to administer this chapter and said Board or its designated agency shall keep and render separate account of the funds expended and separate statistical reports of the persons aided, under the provisions of this chapter: *Provided*, That whenever necessary said Board shall appoint an acceptable member of the personnel to stand in loco parentis to any minor qualifying for aid hereunder. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 14.)

**§ 46-115 [8:265]. Board of Commissioners—Cooperation with Social Security Board.**

The Board of Commissioners or its designated agency is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of this chapter, and to accept any sums allotted or apportioned by such Board as are available under the provisions of the Social Security Act. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 15.)

**§ 46-116 [8:266]. Care for blind—Liberal construction—Saving clause.**

The provisions of this chapter are to be liberally construed to effect its objects and purposes, and if any section, subsection, or subdivision of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. (Aug. 24, 1935, 49 Stat. 747, ch. 639, § 16.)

**Chapter 2.—OLD-AGE ASSISTANCE**

**Sec.**

- 46-201. Old-age assistance—Definitions.
- 46-202. Eligibility—Age—Residence requirements—Other relief not given except medical aid.
- 46-203. Agency to administer old-age assistance—Amount—Reference to Home for Aged and Infirm—Hearing and review.
- 46-204. Old-age assistance inalienable and exempt from levy.
- 46-205. Recipient of old-age assistance—Reasonable funeral expenses authorized.
- 46-206. Application for old-age assistance.
- 46-207. Investigation of applicant for assistance.
- 46-208. Change or suspension of old-age assistance.
- 46-209. Inquiry into old-age assistance improperly obtained.
- 46-210. Old-age assistance obtained by fraud—Penalty.
- 46-211. Liability of relatives for support—Suit to recover.
- 46-212. Estate of recipient liable for assistance—Transfer of property to board as security.
- 46-213. Appropriation for old-age assistance.
- 46-214. Expenses for old-age assistance to be paid as other expenses.
- 46-215. Board of Commissioners—Cooperation with Federal Social Security Board.

**§ 46-201 [8:281]. Old-age assistance—Definitions.**

The care and assistance of aged persons who are in need and whose physical or other condition or disabilities seem to render permanent their inability to provide properly for themselves is hereby declared to be a special matter of public concern and a necessity in promoting the public health and welfare. To provide such care and assistance at public expense a system of old-age assistance is hereby established for the District of Columbia. The term "assistance" whenever used in this chapter shall be construed to include relief, aid, care, or support. The pronoun



"he" or "his" when used herein shall be construed to include persons of either sex. (Aug. 24, 1935, 49 Stat. 747, ch. 640, § 1.)

§ 46-202 [8: 282]. Eligibility—Age—Residence requirements—Other relief not given except medical aid.

Assistance may be granted only to an applicant who (a) is a citizen of the United States; (b) has attained the age of sixty-five years or upward; (c) has resided in the District of Columbia for five years or more within the nine years immediately preceding application for assistance, and who has resided therein continuously for one year immediately preceding the said application; (d) is not at the time of making application an inmate of any prison, jail, workhouse, insane asylum, or any other public reformatory or correctional institution; (e) is not a habitual tramp or beggar; (f) has no child or other person financially able to support him and legally responsible for his support; and (g) has not made a voluntary assignment or transfer of property for the purpose of qualifying for such assistance.

During the continuance of the old-age assistance no recipient shall receive any other relief from the District of Columbia except for medical and surgical and nursing care. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 2.)

§ 46-203 [8: 283]. Agency to administer old-age assistance—Amount—Reference to Home for Aged and Infirm—Hearing and Review.

The Board of Commissioners of the District of Columbia shall administer old-age assistance under this chapter through such agent or agency as it may designate. It shall prescribe the form of and print and supply the blanks for applications, reports, and affidavits, and such other forms as it may deem advisable, and shall make rules and regulations necessary for the carrying out of the provisions of this chapter, and shall make and render any and all reports required by the federal Social Security Board or otherwise authorized or required by law. The amount of the assistance which any such person shall receive, and the manner of providing it, shall be determined by the Board of Commissioners or its designated agency, with due regard to the conditions existing in each case. The Board of Commissioners may, in lieu of the assistance herein provided, refer any applicant to the Board of Public Welfare for admission to the Home for Aged and Infirm, whenever, in the judgment of the said Commissioners, such action may be in the public interest or in the best interest of the applicant. Any applicant for old-age assistance whose claim for initial relief or modification of relief is denied may apply to the agency designated by the Commissioners for the administration of this chapter for hearing and review of said claim and the determination of the designated agency on such appeal shall be final except that the Commissioners of the District of Columbia in their discretion may grant a further review of the matters embraced in the aforesaid application.

If, in the opinion of the Board of Commissioners or its designated agency, the recipient is incapable of taking care of himself or his money, it may direct the payment to any responsible person for the benefit

of the pensioner, or may suspend payment if deemed advisable. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 3.)

#### CROSS REFERENCES

Rules and regulations for care and management of pensioners' property, § 46-212.

Rules and regulations generally, § 1-226.

§ 46-204 [8: 284]. Old-age assistance inalienable and exempt from levy.

All assistance given under this chapter shall be inalienable by any assignment or transfer and shall be exempt from levy or execution under the laws of the United States and the District of Columbia. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 4.)

§ 46-205 [8: 285]. Recipient of old-age assistance—Reasonable funeral expenses authorized.

On the death of a recipient of old-age assistance such reasonable funeral expenses as the Board of Commissioners or its designated agency may deem necessary may be paid for the burial of such person. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 5.)

§ 46-206 [8: 286]. Application for old-age assistance.

A person requesting assistance under this chapter shall make his application therefor to the Board of Commissioners or its designated agency. The person requesting assistance may apply in person, or the application may be made by another in his behalf. The application shall be made in writing and under oath. (Aug. 24, 1935, 49 Stat. 748, ch. 640, § 6.)

§ 46-207 [8: 287]. Investigation of applicant for assistance.

Upon the receipt of an application for assistance an investigation and record shall be promptly made of the circumstances of the applicant. The object of such investigation shall be to ascertain the facts supporting the application made under this chapter and such other information as may be required by the rules hereunder formulated. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 7.)

#### CROSS REFERENCE

Rules and regulations, § 46-203.

§ 46-208 [8: 288]. Change or suspension of old-age assistance.

All assistance under this chapter shall be reviewed from time to time as frequently as may be required by the rules hereunder formulated. After such further investigation as may be deemed necessary the amount and manner of assistance may be changed or the assistance may be withdrawn if it is found that the recipient's circumstances have changed sufficiently to warrant such action, and all cases in which relief is being extended shall be reviewed every six months. It shall be within the power of the Board of Commissioners or its designated agency at any time to cancel and revoke assistance and to suspend payments for such periods as it may deem proper. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 8.)

§ 46-209 [8: 289]. Inquiry into old-age assistance improperly obtained.

If at any time the Board of Commissioners or its designated agency has reason to believe that any assistance has been improperly obtained, it shall



cause special inquiry to be made. If, on inquiry it appears that it was improperly obtained, it shall be canceled. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 9.)

**§ 46-210 [8: 290]. Old-age assistance obtained by fraud—Penalty.**

Any person, who by means of a wilfully false statement or representation, or by impersonation, or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain (a) assistance to which he is not justly entitled; (b) a larger amount of assistance than that to which he is justly entitled; (c) payment of any forfeited installment grant; (d) or aids or abets in the buying or in any way disposing of the property of an old-age assistance recipient, without the consent of the Board of Commissioners or its designated agency, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than \$500 or imprisoned for a period not to exceed six months, or both. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 10.)

**§ 46-211 [8: 291]. Liability of relatives for support—Suit to recover.**

The kindred of any person otherwise entitled to old-age assistance under the provisions of this chapter, in line and degree of spouse, father, child, or grandchild, living in the District of Columbia and of sufficient ability so to do shall be bound to support such person, in the order above named and in proportion to their respective ability. If at any time during the continuance of old-age assistance the Board of Commissioners or its designated agency has reason to believe that a spouse, father, child, or grandchild is reasonably able to assist him, it shall be empowered to bring suit, after notifying such person of the amount of old-age assistance, against such spouse, father, child, or grandchild to recover the amount of assistance provided under the chapter, or such part thereof as such spouse, father, child, or grandchild was reasonably able to pay. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 11.)

**§ 46-212 [8: 292]. Estate of recipient liable for assistance—Transfer of property to Board as security.**

At the death of recipient of an old-age assistance, or of the last survivor of a recipient married couple, the total amount of assistance since the first grant, together with simple interest at the rate of 3 per centum per annum, shall be deducted and allowed by the proper courts out of the proceeds of his property as a preferred claim against the estate of the person so assisted, and refunded to the Treasurer of the United States to the credit of the District of Columbia, leaving the balance for distribution among the lawful heirs in accordance with law: *Provided*, That upon sufficient cause, such as mismanagement, failure to keep in repair, or the inability of any recipient of assistance properly to manage his property, the designated agency of the Commissioners may demand the assignment or transfer of such property, or a proper part thereof, upon the first grant of such assistance, or at any time thereafter that it deems advisable for the purpose of safeguarding the interest of an applicant or for the protection of the funds of the District of Columbia. Such agency

shall establish such rules and regulations regarding the care, management, transfer, and sale of such property as it deems advisable and shall provide for the return of the balance of the claimant's property into his hands whenever the assistance is withdrawn or the claimant ceases to request it. If the District of Columbia collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under this chapter, one-half of the net amount so collected shall be paid to the United States in accordance with the provisions of title 42, sections 301-306, Supplement V, of the Code of the Laws of the United States. (Aug. 24, 1935, 49 Stat. 749, ch. 640, § 12.)

**CROSS REFERENCE**

Rules and regulations, § 46-203.

**§ 46-213 [8: 293]. Appropriation for old-age assistance.**

Congress shall appropriate annually and make available to the order of the Board of Commissioners of the District of Columbia such sums as may be needed to pay the share of the District of Columbia for old-age assistance, provided under this chapter together with a sufficient sum to defray its share of the administrative expenses to be incurred in connection therewith, and include such sums in the annual District of Columbia Appropriation Act. Should the sum so appropriated, however, be expended or exhausted during the year for the purposes for which it was appropriated, additional sums shall be appropriated by Congress as occasion demands to carry out the provisions of this chapter. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 13.)

**§ 46-214 [8: 294]. Expenses for old-age assistance to be paid as other expenses.**

All necessary expenses incurred by the District of Columbia in carrying out the provisions of this chapter shall be paid in the same manner as other expenses of the District of Columbia are paid. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 14.)

**§ 46-215 [8: 295]. Board of Commissioners—Cooperation with Federal Social Security Board.**

The Board of Commissioners or its designated agency is hereby authorized and directed to cooperate in all necessary respects with the Social Security Board of the United States Government in the administration of this chapter, and to accept any sums allotted or apportioned by such Board as are available under the provisions of Title 42, chapter 7, Supplement V, of the Code of the Laws of the United States. (Aug. 24, 1935, 49 Stat. 750, ch. 640, § 15.)

**Chapter 3.—UNEMPLOYMENT COMPENSATION**

**Sec.**

- 46-301. Definitions.
- 46-302. District Unemployment Fund.
- 46-303. Employer contributions.
- 46-304. Method of paying employer contributions—Refunds.
- 46-305. Appropriations.
- 46-306. Deposit in Unemployment Trust Fund.
- 46-307. Amount and duration of benefits.
- 46-308. Method of paying benefits.
- 46-309. Eligibility for benefits.



## Sec.

- 46-310. Disqualification for benefits.
- 46-311. Determination of claims—Appeal—Record of proceedings—Refusal to obey—Subpoena—Fees.
- 46-312. Court review.
- 46-313. Administration—Civil service.
- 46-314. Method of paying administrative expenses.
- 46-315. District Unemployment Compensation Board.
- 46-316. Reciprocal agreements with States.
- 46-317. Records and reports.
- 46-318. Protection of rights and benefits.
- 46-319. Penalties.
- 46-320. Disposition of fines.
- 46-321. Representation of Board in court.
- 46-322. Right to amend or repeal.
- 46-323. Separability of provisions.
- 46-324. Short title.

## § 46-301 [8: 311]. Definitions.

As used in this chapter, unless the context indicates otherwise—

(a) The term "employer" means the District, and every individual and type of organization for whom services are performed under a contract of employment.

(b) The term "employment" means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except—

(1) domestic service in a private home;

(2) casual labor not in the course of the employer's trade or business;

(3) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(4) service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States or (B) exempt from the tax imposed by section 1600 of the Internal Revenue Code of the United States (U. S. C., title 26) by virtue of any other provision of law: *Provided*, That in the event that the Congress of the United States, on or before Oct. 17, 1940, has permitted or in the event that the Congress of the United States shall permit States to require any instrumentalities of the United States (except such as are (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 of the Internal Revenue Code (U. S. C., title 26) by virtue of any other provision of law), to make contributions to an unemployment fund under a State unemployment compensation law, then, to the extent so permitted by Congress, and from and after the date as of which such permission becomes effective, or January 1, 1940, whichever is the later, all of the provisions of this chapter shall be applicable to such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employees, individuals, and services: *Provided further*, That if the District of Columbia should not be certified by the Social Security Board under section 1603 of the Internal Revenue Code (U. S. C., title 26, § 1603) for any year, the payments

required of any instrumentality of the United States or its employees with respect to such year shall be refunded by the District Unemployment Compensation Board in accordance with the provisions of section 46-304 (f).

(5) service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(6) service performed in the employ of the District as a school officer or teacher, or as a member of the police or fire department, or by an individual who is subject to the act entitled "An Act for the retirement of employees in the classified Civil Service, and for other purposes," approved May 22, 1920 (title 5, chapter 14, of the Code of the Laws of the United States), as amended and

(7) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act (U. S. C., title 45, §§ 351-367) and service performed as an employee representative as defined in said Act. This amendment shall not be construed to affect the payment of unemployment benefits at any time with respect to any period prior to July 1, 1939, based upon employment performed prior to July 1, 1939;

(9) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(10) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

(c) The term "wages" means all remuneration for employment, including the cash value, as determined by the Board under regulations prescribed by it, of all remuneration paid in any medium other than cash. Whenever gratuities are received by an individual in the course of his employment from persons other than his employer, the Board, under regulations prescribed by it, shall determine the average amount of such gratuities generally received by individuals performing services of that nature, and the amount so determined shall, for the purpose of the contributions required and the benefits provided under this chapter, be included as a part of the wages of such individual: *Provided*, That such term "wages" shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to any individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year and after December 31, 1939.



(d) "Benefit year" with respect to any individual means the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 46-311 (a) shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers equal to not less than whichever is the lesser of (1) twenty-five times his weekly benefit amount, and (2) \$250.

(e) An individual shall be deemed unemployed in any week during which no earnings are payable to him, or in any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount.

(f) "Earnings" means all remuneration payable for personal services, including wages, commissions, and bonuses and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. Gratuities received by an individual in the course of his work shall be treated as earnings. The reasonable cash value of all remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board.

(g) The phrase "dependent relative" means a mother, father, stepmother, stepfather, brother, or sister, who, because of age or physical disability, is unable to work, or a child under sixteen years of age, or a child who is unable to work because of physical disability, who is wholly or mainly supported by the individual receiving the benefit.

(h) The term "Board" means the District Unemployment Compensation Board established by section 46-315.

(i) The term "District" means the District of Columbia.

(j) The term "benefits" means the payments to unemployed individuals provided for in section 46-307.

(k) The term "week" means the period commencing at 12:01 o'clock ante meridian Sunday and ending at 12 o'clock midnight the following Saturday.

(l) The term "month" means calendar month; except that for the purpose of computing the contributions payable with respect to any calendar month, and for that purpose only, such calendar month shall be deemed, if, and to the extent that individuals are paid on a weekly basis, to be the period covered by all the weeks which commence within such calendar month.

(m) The phrase "Unemployment Trust Fund" means the Unemployment Trust Fund established by title 42, section 1104, Supplement V, of the Code of the Laws of the United States.

(n) The phrase "employment office" means a free public employment office or branch thereof in the District, or elsewhere.

(o) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(p) The Secretary of the Treasury is authorized and directed to transfer from the account of the District of Columbia in the unemployment trust fund to the railroad unemployment insurance account in the unemployment trust fund, an amount equal to the "preliminary amount" and an amount equal to the "liquidating amount," whenever such amounts, respectively, have been determined, with respect to the District of Columbia, pursuant to title 45, section 363 of the Code of the Laws of the United States. (Aug. 28, 1935, 49 Stat. 946, ch. 794, § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14; Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, § 1.)

#### COMPILER'S NOTES

In paragraph (h), the 1935 act refers to the Board established by § 15 of that act (§ 46-314 herein). However, the Board is established by § 16 (§ 46-315 herein).

Section 2 of the act approved July 2, 1940, provided as follows:

#### TRANSITION PROVISIONS

"(a) As used in this section unless the context clearly requires otherwise—

"(1) 'old law' means the unemployment-compensation law prior to its amendment by this title;

"(2) 'new law' means the unemployment-compensation law as amended by this title;

"(3) 'effective date' means the date upon which the new law becomes effective; and

"(4) 'continuous period of compensable unemployment' means a period of unemployment beginning prior to and continuing up to and after the effective date in the case of an individual who, prior to the effective date, has filed a claim for benefits for a week or weeks of unemployment in such period: *Provided*, That the individual has satisfied the requirements of paragraph 2 of subsection (a) of section 10 of the old law and has not exhausted his rights to benefits pursuant to subsection (b) of section 8 of the old law prior to the effective date.

"(b) Except as otherwise specifically provided in subsection (c) of this section, the new law shall be exclusively applicable with respect to any individual on and after the effective date. No provision of the old law shall be construed to limit or extend the rights of any individual as fixed by the new law, after the new law becomes exclusively applicable with respect to such individual as provided in this section.

"(c) With respect to any individual who is unemployed during a continuous period of compensable unemployment (as defined in paragraph 4 of subsection (a) of this section) sections 1 (d), 8 (a) (insofar as it relates to the determination of the weekly benefit rate for total unemployment), 8 (b), 8 (c), 8 (d), and 10 (a) (2) of the old law shall be exclusively applicable until the expiration of such continuous period of compensable unemployment.

"(d) Upon application by an employer, filed pursuant to suitable regulations by the Board, the Board shall determine the extent to which the employer's contributions paid for the first six months of the calendar year 1940 were in excess of his contributions due for said period under the new law and shall make an adjustment for that amount, without interest, solely in connection with subsequent contributions by him."



AMENDMENTS

Paragraph (7) in subsection (b) was added by the act of Feb. 13, 1936. It was amended by act of June 23, 1936, to read as above. As originally enacted it read: "(7) Service performed in the employ of the following: All religious institutions and schools maintained by them; colleges or universities, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Paragraph (8) of subsection (b) was added by act of June 25, 1938. Paragraph (p) [(b)] was also added by the last-mentioned act.

Paragraph (9) in subsection (b) was added by the act of April 22, 1940. Section 2 of this last-mentioned act provided that said paragraph (9) should "be effective January 1, 1940."

Act of July 2, 1940, added paragraph (b) (10), and the proviso to subsection (c), and substituted subsections (d), (e), and (f) as above for the former subsections which provided as follows:

"(d) The phrase 'weekly wage' as applied to any individual who has been engaged in employment for at least thirty hours in each of twenty-six or more weeks within the period of one hundred and four weeks ending with the week in which such individual was last engaged in employment, means the sum obtained by dividing the total of the wages earned in all the weeks within such period in which he was engaged in employment at least thirty hours by the number of such weeks; and, as applied to any individual who has not been engaged in employment for at least thirty hours in each of twenty-six or more weeks within such period of one hundred and four weeks, means the sum obtained by dividing the total of the wages earned in such period by the total number of weeks within such period in which he was engaged in employment.

"(e) The phrase 'totally unemployed' means that the individual concerned has performed in the particular week no services whatsoever for which remuneration (of any nature whatsoever) is payable, has not engaged in any self-employment, and is found by the Board to have been unable to engage in any self-employment in which he was formerly engaged.

"(f) The phrase 'partially unemployed' means that the individual concerned has failed to earn in the particular week remuneration (of any nature whatsoever) of at least \$2 more than the benefit he would be entitled to receive under this Act with respect to such week if totally unemployed and otherwise eligible."

Other amendments made by act of July 2, 1940, were as follows: In subsection (g) the words "or a child who is unable to work because of physical disability" were inserted following the words "sixteen years of age"; in subsection (n), the words "or elsewhere," were inserted after the word "District" and the rest of the sentence omitted. The new subsection (o) was also added by this act.

Act of October 17, 1940, substituted paragraph (4) as above for the former paragraph (4) which read as follows: "(4) service performed in the employ of the United States Government or of an instrumentality of the United States." Section 2 of this act provided as follows: "This act shall be effective as of January 1, 1940: *Provided, however,* That any employer required to make retroactive payment of any contributions shall be given thirty days from the enactment of this Act within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence one month from the date of the enactment of this Act."

STATUTORY REFERENCE

Subdivision (p) is in U. S. C., title 45, § 364.

§ 46-302 [8: 312]. District Unemployment Fund.

There is hereby established the District Unemployment Fund, into which shall be paid all contributions received or collected pursuant to this chapter and from which shall be paid all benefits provided for under this chapter. The Fund shall be

managed and controlled by the Board in the manner provided in this chapter; and the Board shall keep complete and accurate accounts of the status of the Fund, and shall include a statement of such status in its yearly report to Congress. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 2.)

§ 46-303 [8: 313]. Employer contributions.

(a) Every employer who employs one or more individuals in any employment shall for each month, beginning with the month of January 1936, pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to such employment by him during such month:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment during the calendar years 1938 and 1939, the rate shall be 3 per centum;

(b) Every employer who employs one or more individuals in any employment shall, beginning with the month of January 1940, pay 2.7 per centum of the total wages paid with respect to such employment.

(c) The Board shall for each calendar year, commencing with the second six months of the calendar year 1942, on the basis of the unemployment hazard attached to employment by the respective employers, (1) segregate the employers into classes, and (2) determine the rate of contribution, which shall not be less than 1½ per centum nor more than 4 per centum, to be paid by the employers of each such class: *Provided*, That in any such year the rate of contribution applicable to any employer shall be 2.7 per centum unless there shall have been at least three calendar years throughout which benefits were payable with respect to any individual in his employ who became unemployed and was eligible for compensation, and the estimated total contributions payable by all employers in any such calendar year shall not be less than 2.7 per centum of the estimated wages with respect to which such contributions are paid. In making such classifications the Board shall take into account all relevant and measurable factors which it deems to have a bearing on the unemployment hazard attached to employment by any employer, and shall apply such form of classification or such rating system as in its judgment is best calculated to rate individually the unemployment hazard most equitably for each employer or group of employers, and to encourage the stabilization of employment. The standards to be used as a basis of such classification for each calendar year shall be adopted by the Board at least sixty days prior to January 1 of such year, and shall be published in at least two newspapers of general circulation in the District once each week for three successive weeks during the month of November of the year preceding such January 1. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; June 2, 1940, 54 Stat. 731, ch. 524, § 1.)



## AMENDMENTS

In paragraph (a) (3) the 1940 amendment struck out the following words: “, and 1940.”; struck out paragraph (a) (4); in paragraph (b) struck out the letter “(b)” and inserted in lieu thereof the letter “(c)” and added a new paragraph (b); in the original paragraph (b) struck out the words “calendar year 1941” and substituted in lieu thereof “second six months of the calendar year 1942”, substituted the word “paid” for the word “payable”, and changed the figure “3” to “2.7.”

## COMPILER'S NOTE

For effect of amendment, see note to § 46-301.

## CROSS REFERENCE

Power of the Board to recommend change in rate of contributions, § 46-313 (d).

### § 46-304 [8: 314]. Method of paying employer contributions—Refunds.

(a) The contributions required by section 46-303 shall be paid to and collected by the Board, and shall, immediately upon collection, be paid into the District Unemployment Fund.

(b) Contributions shall become due and be payable at such time and in accordance with such regulations as the Board may prescribe. No extension of the time for filing any return or for the payment of the contributions shall be allowed to any employer. All moneys so required to be paid to and collected by the Board shall be subject to audit by the District Auditor.

(c) If the contributions are not paid when due, there shall be added, as part of the contributions, interest at the rate of 1 per centum per month from the date the contributions became due until paid.

(d) In the event of the dissolution, insolvency, bankruptcy, composition, or assignment for benefit of creditors, of any employer, contributions then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the District, and wages (not exceeding \$250 with respect to any individual) due for employment performed within the six months preceding such event.

(e) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(f) *Refunds.*—If not later than one year after the date on which any contributions or interest thereon became due an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the Board shall determine that such contributions or interest or any portion thereof was erroneously collected, the Board shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the Board shall refund said amount, without interest, from the clearing account or benefit account upon checks issued by the Board or its duly authorized agent. For like cause and within the same period, adjustment or refund may be so made on the Board's own initiative. Should benefits have been paid based upon work

records filed by the employer, claiming an adjustment or refund, such benefit should be disregarded for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time of the refund, based upon records filed with this Board by such employer, shall to that extent be allowed and shall not be deemed to have been paid erroneously: *Provided*, That applications with respect to adjustments or refunds for the years 1936, 1937, 1938, and 1939 may be made within one year from July 1, 1940. All refunds paid pursuant to this subsection shall be subject to a prior audit by the District Auditor. (Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; June 2, 1940, 54 Stat. 731, ch. 524, § 1.)

## COMPILER'S NOTE

Section 3 of Title I of the said 1940 act is as follows: “This title shall take effect as of 12:01 antemeridian, July 1, 1940.”

## AMENDMENTS

The above paragraph (b) was substituted for (b) of the 1935 act. The old section read as follows:

“(b) Not later than the fifteenth day after the close of each month, every employer shall make a return of and shall pay the contributions which shall have accrued with respect to wages payable with respect to employment by him within such month. Each such return shall be made under oath (except where the amount of the contribution payable is less than \$10), shall be filed with the Board, and shall contain such information and be made in such manner as the Board may by regulations prescribe. No extension of the time for filing the return or for payment of the contributions shall be allowed to any employer.”

Paragraph (f) was added by the 1940 act.

For effect of amendment, see note to § 46-301.

## CROSS REFERENCE

Refund of taxes generally, § 47-1017 et seq.

### § 46-305 [8: 316]. Appropriations.

There is hereby authorized to be appropriated to the District for each fiscal year such sum as may be necessary to permit the District to pay the contributions required of it under this chapter. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 6.)

### § 46-306 [8: 317]. Deposit in Unemployment Trust Fund.

All moneys received in the District Unemployment Fund from sources other than the Unemployment Trust Fund shall be immediately paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund to be held in trust for the District upon the terms and conditions provided in title 42, section 1104, Supplement V, Code of the Laws of the United States. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7.)

### § 46-307 [8: 318]. Amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the benefit account of the District Unemployment Fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b) An individual's weekly benefit amount shall be the amount appearing in column B in the table set forth in this subsection on the line on which in column A of such table appears the total wages for employment paid to such individual by employers during that quarter of his base period in which such wages were the highest.



UNEMPLOYMENT BENEFIT TABLE

COLUMN A Wages paid in highest quarter of base period	COLUMN B Weekly bene- fit amount	COLUMN C Qualifying amount
\$37.50 to \$138.00-----	\$6	\$150
\$138.01 to \$161.00-----	7	175
\$161.01 to \$184.00-----	8	200
\$184.01 to \$207.00-----	9	225
\$207.01 to \$230.00-----	10	250
\$230.01 to \$253.00-----	11	250
\$253.01 to \$276.00-----	12	250
\$276.01 to \$299.00-----	13	250
\$299.01 to \$322.00-----	14	250
\$322.01 to \$345.00-----	15	250
\$345.01 to \$368.00-----	16	250
\$368.01 to \$391.00-----	17	250
\$391.01 and over-----	18	250

(c) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less the earnings (if any) payable to him with respect to such week. For the purpose of this subsection, the term "earnings" shall include only that part of the remuneration payable to him for such week which is in excess of 40 per centum of his weekly benefit amount for any week. Such benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to nineteen times his weekly benefit amount or one-half of the wages for employment paid to such individual by employers during his base period, whichever is the lesser.

(e) *Dependent's Allowance.*—In addition to the benefits payable under subsections (b) and (c) of this section, each individual who is unemployed in any week shall be paid with respect to such week \$1 for each dependent relative, but not more than \$3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment, nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than \$18. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 8; June 2, 1940, 54 Stat. 732, ch. 524, § 1.)

AMENDMENT

The section as contained in the 1935 act provided as follows:

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Board shall pay, from the District Unemployment Fund, to every eligible individual (1) with respect to each week, commencing with the week beginning January 2, 1938, in which such individual was totally unemployed, a week's benefit, which shall be an amount, computed to the nearest half-dollar, equal to 40 per centum of his weekly wage, plus 10 per centum of such weekly wage if he has a dependent spouse, plus an additional 5 per centum of such weekly wage for each dependent relative: *Provided*, That in no case shall the amount paid to any such individual for any week exceed \$15, or 65 per centum of his weekly wage, whichever is the lesser; and (2) with respect to each week commencing with the week beginning January 2, 1938, in which such individual was partially unemployed, an amount which when added to the total amount of remuneration (of any nature whatsoever) payable for services performed by such individual during such week, will total \$2 more than the week's benefit to which he would be entitled if totally unemployed during such week.

"(b) With respect to unemployment occurring within any period of fifty-two weeks, benefits shall be payable to every eligible unemployed individual (1) in the ratio of one-third of a week's benefit to each credit week which occurred within the period of one hundred and four weeks ending with the week in which he was last engaged in employment, until a total amount equivalent to sixteen times a week's benefit has been paid to him; and (2) after such total has been paid, in the ratio of one-twentieth of a week's benefit to each credit week which occurred within the period of two hundred and sixty weeks ending with the week in which he was last engaged in employment.

"(c) All payments of benefits under this section shall be charged, in accordance with the applicable ratio, against the earliest credit week or part thereof available for such purpose.

"(d) As used in this section, the term 'credit week' means a week in which the individual concerned performed some employment, against which no benefits have been charged, and with respect to which no benefits were paid to the individual: *Provided*, That any week occurring within the customary school vacation period shall not be counted as a credit week in the case of any individual who attended a school, college, or university in the last preceding school term, and returns to a school, or college, or university at the end of such vacation period."

CROSS REFERENCE

Rules and regulations, § 46-313.

§ 46-308 [8: 319]. Method of paying benefits.

Each week the Board shall requisition, from the moneys to the credit of the District in the Unemployment Trust Fund, the amount required to pay the benefits accruing with respect to such week. Upon receipt of the amount requisitioned, the Board shall deposit it as part of the District Unemployment Fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits provided in this chapter. All payments of benefits shall be made by checks drawn by the Board, shall be made at the employment offices designated by the Board, and shall be subject to a post, but not a prior, audit by the District auditor. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 9.)

§ 46-309 [8: 320]. Eligibility for benefits.

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Board—

(1) that he has filed a claim for benefits in the form and at the time prescribed, and at the employment office designated, by the Board;

(2) that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column "C" of the table in section 46-307 (b), on the line on which in column "B" his weekly benefit amount appears;

(3) that he is physically able to work;

(4) that he is available for work and has registered and inquired for work at the employment office designated by the Board, with such frequency and in such manner as the Board may by regulations prescribe: *Provided*, That failure to comply with this condition may be excused by the Board upon a showing of good cause for such failure;

(5) that he has been unemployed for a waiting period of not more than two weeks. No week shall be counted as a week of unemployment for the purposes of this subsection—



(A) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits: *Provided*, That this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment: *And provided further*, That the week or the two consecutive weeks immediately preceding a benefit year, if part of one uninterrupted period of unemployment which continues into such benefit year, shall be deemed (for the purposes of this subsection only) to be within such benefit year as well as within the preceding benefit year;

(B) if benefits have been paid with respect thereto; and

(C) unless the individual was eligible for benefits with respect thereto as provided in this section and section 46-310, except for the requirements of this paragraph; and

(6) that the total or partial unemployment in such week is not directly due to a strike or jurisdictional labor dispute still in active progress in the establishment where he is partially employed or was last employed.

(b) Copies of the regulations prescribed by the board pursuant to paragraph (4) shall be furnished by the board to each employer; and each employer shall post one of such copies on each of his premises in a conspicuous and easily accessible place and shall furnish a copy to each individual who leaves his employ. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 10; June 2, 1940, 54 Stat. 733, ch. 524, § 1.)

#### AMENDMENT

The 1940 amendment inserted the present paragraphs (2) and (5). In the 1935 act they appeared as follows: "(2) that he has performed employment in at least thirteen weeks within the period of fifty-two weeks ending with the week in which he was last engaged in employment;"

"(5) that he has been totally unemployed and otherwise eligible for benefits under this act for a waiting period of at least three weeks with respect to which he received no benefits, prior to the week for which he claims benefits; and for the purpose of computing such waiting period, two weeks of partial unemployment shall be counted as one week of total unemployment. Such weeks of unemployment need not be consecutive but may be accumulated over the period of fifty-two weeks prior to the week for which he claims benefits; and \* \* \*"

#### CROSS REFERENCE

Rules and regulations, § 46-313 and notes.

#### § 46-310 [8: 321]. Disqualification for benefits.

(a) An individual who has left his work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which he so left nor with respect to the three weeks immediately following.

(b) An individual who has been discharged for misconduct occurring in the course of his work, proved to the satisfaction of the Board, shall not be eligible for benefits with respect to the week in which such discharge occurred nor with respect to such additional number of weeks immediately following (not less than one nor more than six) as the Board may determine, under regulations prescribed by it, in proportion to the degree of such misconduct.

(c) If an individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, either to apply for new work found by the Board to be suitable when notified by any employment office, or to accept any such work when offered to him, he shall not be eligible for benefits with respect to the week in which such failure occurred nor with respect to the three weeks immediately following. In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training and experience of the individual, (2) the distance of the place of work from the individual's place of residence, and (3) the risk involved as to health, safety, or morals. Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (2) if the wages, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) If an individual under twenty-one years of age otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, to attend courses at a vocational or other school when recommended by the manager of the employment office or by the Board and such courses are available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11.)

#### CROSS REFERENCE

Rules and regulations, § 46-313 and notes.

#### § 46-311 [8: 322]. Determination of claims—Appeal—Record of proceedings—Refusal to obey—Subpena—Fees.

(a) As soon as possible after an individual has filed a claim for benefits, an agent of the board designated by it for such purpose shall determine whether or not such individual is entitled thereto and, if such individual is found to be so entitled, shall determine the week with respect to which payments will commence and the amount of the payments per week. Upon such determination, the agent shall give notice thereof to such individual and to his most recent employer, and benefits shall be paid or denied accordingly; but either party may file an appeal to the Board from such determination within ten days after such notification was delivered to him or mailed to him at his last-known address, and in the event that any such appeal is filed, no benefits shall be paid to the individual until the appeal shall have been finally decided by the Board.

(b) Upon the filing of any such appeal, the Board shall appoint, in its discretion, either an examiner regularly employed by it on a salary basis or an appeal tribunal, to hold hearings at which both parties shall be given opportunity to present evidence and to be heard. In the conduct of such hearings, the



parties shall not be bound by rules of evidence or other technical rules of procedure, but the examiner or appeal tribunal, as the case may be, shall use due diligence to ascertain the true facts of the case.

(c) On the basis of the evidence presented at such hearings, the examiner or appeal tribunal, as the case may be, shall make a finding of the facts of the case and shall render a decision in accordance therewith. Each such decision shall automatically become the decision of the board and effective as such as of the 10th day following the date such decision was rendered, unless, before such 10th day, upon petition of either party under regulations prescribed by the Board or upon its own motion, the Board has affirmed, reversed, or modified such decision, or has set it aside and ordered a rehearing or the taking of additional evidence before the same or a different examiner or appeal tribunal, or the Board. All decisions rendered by the Board affirming, reversing, or modifying any decision of an examiner or appeal tribunal shall become effective immediately.

(d) Each appeal tribunal shall consist of an examiner regularly employed by the Board on a salary basis and a representative of employees and a representative of employers designated by the Board. No such representative shall be regularly employed by the Board or have any financial interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of the appeal tribunal is present; and, if either or both of such representatives fail to appear for any such hearing, the examiner shall proceed to hear the case. Each such representative shall be paid such sum, not in excess of \$10, as the Board shall by regulations prescribe, for each day on which he actively engaged, or was present and prepared to engage, in the conduct of any such hearings.

(e) In the discharge of the duties imposed by this section, any member of the Board and any duly authorized examiner shall have power to administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim.

(f) A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at every hearing on any such claim shall be taken down by a stenographer, but shall not be transcribed except upon order of the Board or in the event of an appeal pursuant to section 46-312 hereof. Upon any such appeal, a copy of all the testimony and of the finding of facts upon which the Board's decision was based shall be filed with the court, and the facts so found shall, if supported by the evidence, be binding on the court.

(g) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Board may invoke the aid of the District Court of the United States for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the

Board or officer designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(h) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Board or in obedience to the subpoena of the Board or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(i) Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Board. Such fees and all other expenses of proceedings involving disputed claims shall be deemed part of the expense of administering this chapter. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 12.)

#### § 46-312 [8: 323]. Court review.

(a) Within thirty days after the decision of the Board has become final, either party may appeal to the District Court of the United States for the District of Columbia from such decision. Upon the filing of any such appeal, notice thereof shall be served upon the Board by the appellant. Such appeals shall be heard by the Court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall an appeal act as a supersedeas.

(b) An appeal may be taken from a decision of such court to the United States Court of Appeals for the District. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 13.)

#### § 46-313 [8: 324]. Administration—Civil service.

(a) The Board is hereby authorized and directed to administer the provisions of this chapter. Subject to the Civil Service Act, the Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures, as may be necessary to administer this chapter, and to author-



ize any such person to do any act or acts which could lawfully be done by the Board. The Civil Service Commission is hereby authorized and directed to confer a competitive classified civil-service status upon those employees performing services for the Board upon July 1, 1940: *Provided*, That (1) such employees are certified by the Board as having rendered satisfactory service for not less than six months; (2) that they qualify in such appropriate noncompetitive examination as may be prescribed by the Civil Service Commission: *Provided, however*, That all employees certified by the Board in accordance with condition (1) hereof shall automatically be eligible to take such noncompetitive examination; (3) that they are citizens of the United States; and (4) that they are not disqualified by any provision of section 3 of civil-service rule V. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this chapter.

(b) The Board is further authorized to prescribe all regulations which may be necessary to carry out the provisions of this chapter. Such regulations shall become effective five days after they have been published in a newspaper of general circulation in the District.

(c) The Board shall each year, not later than February 1, submit to Congress a report covering the administration and operation of this chapter during the preceding calendar year, and containing such recommendations as the Board wishes to make.

(d) The Board shall, whenever it believes that a change in the contribution or benefit rates is necessary to protect the solvency of the fund, at once recommend such change to Congress if in session.

(e) The Board is hereby authorized and directed, in the administration of this chapter, to cooperate to the fullest practicable extent with the Social Security Board created by the Social Security Act; to make such reports in such form and containing such information as the Social Security Board may from time to time require, and to comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and to comply with the regulations prescribed by the Social Security Board governing the expenditure of such sums as may be allotted and paid to the District under title 42, sections 501-503, Supplement V, of the Code of the Laws of the United States for the purpose of assisting in administering this chapter. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 14; June 2, 1940, 54 Stat. 733, ch. 524, § 1.)

#### COMPILER'S NOTE

The word "Title" refers to Title I of the 1940 act that amends this section.

Section 3 of Title I of 1940 act is as follows: "This title shall take effect as of 12:01 antemeridian, July 1, 1940."

Section 3 of Civil Service Rule V referred to in subsection (a) is as follows:

"3. Disqualifications.—The Commission may, in its discretion, refuse to examine an applicant for appointment or reinstatement or to certify an eligible for any of the following reasons: (a) Dismissal from the service for delinquency, inefficiency, or misconduct; (b) physical or mental unfitness for the position for which he applies: *Provided*, That the Commission may, in its discretion, exempt from the physical requirements established for

any position a disabled honorably discharged soldier, sailor, or marine upon a certificate of the United States Veterans' Administration attesting that he has completed an appropriate and sufficient rehabilitatory course of training for the duties of the class of positions in which employment is sought; *And provided further*, That the Commission, may in its discretion, waive the physical requirements in the case of a disabled veteran not so trained to permit his examination; (c) criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; (d) intentionally making a false statement as to any material fact, or practicing any deception or fraud in securing examination, registration, certification, or appointment; (e) refusal to furnish testimony as required by rule XIV; and (f) the habitual use of intoxicating beverages to excess.

"Any of the reasons stated in the foregoing clauses (b) to (f), inclusive, shall also be good cause for removal from the service."

#### AMENDMENT

The 1940 act inserted the present paragraph (a). This paragraph appeared in the 1935 act as follows:

"(a) The Board is hereby authorized and directed to administer the provisions of this act. The Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures, as may be necessary to administer this act, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this act."

#### CROSS REFERENCES

Regulations for payment of benefit, § 46-307.

Rules and regulations for reporting for work, § 46-309.

Rules and regulations generally, § 1-226.

Rules and regulations to determine refusal to accept work, § 46-310.

Rules and regulations to determine voluntary leaving of work without good cause, § 46-310.

§ 46-314 [8: 325]. Method of paying administrative expenses.

All moneys received by the Board from the United States under Title 42, sections 501-503, Supplement V, of the Code of the Laws of the United States or from other sources for administering this chapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit to be used solely to pay such administrative expenses. All such payments of expenses shall be made by checks drawn by the Board and shall be subject to audit by the District auditor in the same manner as are payments of other expenses of the District. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15.)

§ 46-315 [8: 326]. District Unemployment Compensation Board.

(a) There is hereby established the District Unemployment Compensation Board, to be composed of the Commissioners of the District as members ex officio, and one representative of employees and one representative of employers to be appointed by the Commissioners. Each such representative shall be a resident of the District and shall hold office for a term of three years from the date of his appointment; except that (1) any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed only for the remainder of such term, and (2) the term of office of the first representative of employees shall be two years. The



chairman of the Commissioners of the District shall be chairman of the Board.

(b) The Board shall administer this chapter through an executive officer to be appointed and employed by the Board. Such executive officer shall act as secretary of the Board and is hereby authorized to act in the name of the Board in all matters specifically delegated to him by the Board.

(c) The Commissioners of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid \$10 for each day of active service. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16.)

#### § 46-316 [8: 327]. Reciprocal agreements with States.

The Board is hereby authorized, upon such terms as in its judgment will not result in any loss to the District Unemployment Fund, to enter into agreements with the proper authorities under State unemployment-compensation laws whereby there shall be effected with respect to individuals who have removed from employment in the District to employment in the State covered by the agreement, or who have removed from employment in such State to employment in the District, an exchange of the rights acquired by such individuals with respect to unemployment benefits in the place of their former employment. The terms of all such agreements entered into by the Board shall be published at least once in a newspaper of general circulation in the District. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 17.)

#### § 46-317 [8: 328]. Records and reports.

(a) Every employer shall keep true and accurate employment records of all individuals employed by him in employment, including the hours of employment and the wages payable therefor. Such records shall be open to inspection by the Board every day except Saturdays, Sundays, and legal holidays, between the hours of 9 o'clock antemeridian and 4 o'clock postmeridian.

(b) The Board may require from any such employer such reports in connection with his business, covering employment, employees, wages, hours, unemployment, and related matters, as the Board deems necessary to the effective administration of this chapter. Information thus obtained shall not be published or be open to the public in any manner which will reveal the employer's identity; and any person who violates any provision of this section shall be fined not less than \$20 nor more than \$200 or imprisoned not longer than ninety days, or both.

(c) Upon request therefor, the Board shall furnish to any agency of the United States or of the District charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and a statement of such recipient's rights to further benefits under this chapter. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 18.)

#### § 46-318 [8: 329]. Protection of rights and benefits.

(a) No agreement by any individual to waive any of his rights under this chapter, or to pay any part of the contribution payable by his employer with re-

spect to his or any other individual's employment shall be valid; nor shall any employer make, require, or permit any deduction from the wages payable to his employees for the purpose of paying any part of the contributions required of the employer under this chapter, or require or attempt to induce any individual to waive any right he may acquire under this chapter. Any employer who violates any provision of this subsection shall, for each such offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned not more than six months, or both.

(b) No assignment of any right to benefits which are or may become due or payable under this chapter shall be valid or enforceable; and the right to any such benefits shall be exempt from levy, execution, attachment, and any other remedy whatsoever provided for the collection of debt; and the benefits received by any individual shall be exempt from the payment of all debts except debts accrued for necessities furnished to such individual or his spouse at a time when such individual was unemployed. Exemptions provided for in this subsection may not be waived.

(c) No individual seeking to establish a claim for benefits shall be charged any fee whatsoever by the Board; and no person who represents any such individual in any proceeding shall charge or receive for his services a sum in excess of 10 per centum of the aggregate amount of benefits received by such individual pursuant to the decision in such proceedings. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500 or imprisoned not more than one year, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 19.)

#### § 46-319 [8: 330]. Penalties.

(a) Whoever makes a false statement or representation, knowing it to be false, to obtain or increase any payment provided for in this chapter, for himself or any other individual, shall, for each such offense, be fined not less than \$20 nor more than \$100 or imprisoned not more than sixty days, or both.

(b) Any employer, and any officer or agent of an employer, who furnishes a false record or makes a false statement or representation, knowing it to be false, to avoid the payment of any or all of the contributions required of such employer under this chapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, and any employer who wilfully refuses to pay the contributions or to furnish any report required of him under this chapter, shall, for each such offense, be fined not less than \$100 nor more than \$1,000 or imprisoned not more than six months, or both. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20.)

#### § 46-320 [8: 331]. Disposition of fines.

The amount of all fines collected pursuant to the provisions of this chapter shall be turned over to the Board and by it paid into the District Unemployment Fund. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 21.)

#### § 46-321 [8: 332]. Representation of board in court.

(a) On the request of the board the United States district attorney for the District shall represent the



Board in any action in court arising under this chapter or in connection with the administration and enforcement of its provisions, including actions for the collection of contributions due hereunder; but in any civil action the Board may be represented by its own counsel.

(b) Violations of any provision of this chapter shall be prosecuted by the United States district attorney for the District. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 22.)

§ 46-322 [8: 333]. Right to amend or repeal.

All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of Congress to amend or

repeal this chapter at any time. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 23.)

§ 46-323 [8: 334]. Separability of provisions.

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter and the application of such provision to other persons and circumstances, shall not be affected thereby. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 24.)

§ 46-324 [8: 335]. Short title.

This chapter may be cited as the "District of Columbia Unemployment Compensation Act." (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 25.)







## TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap.	Sec.	Sec.
1. General provisions-----	47-101	47-124. Amount of disbursing officers' outstanding checks to be deposited in Treasury.
2. Budget estimates-----	47-201	47-125. Disbursing officer's checks—Payment to holders of outstanding checks.
3. Collection and disbursement of taxes---	47-301	47-126. Fees collected to be paid into Treasury of the United States.
4. Designation of property for assessment and taxation-----	47-401	47-127. Fees of inspector of gas and meters and harbor master.
5. Rates, records, and surplus funds-----	47-501	47-128. Market rents, fees, and income to be paid to collector of taxes.
6. Tax assessor-----	47-601	47-129. Assessment and permit work—Credit of collections
7. Assessment of real property-----	47-701	47-130. Receipts to be credited to United States and District of Columbia in proportion to fiscal year appropriations.
8. Exemptions from taxation-----	47-801	47-131. Working capital for industrial enterprises at workhouse and reformatory.
9. Family dwellings occupied by owners---	47-901	47-132. Money received from sale of animals and materials to be paid into Treasury.
10. Real property tax sales-----	47-1001	47-133. Appropriations for playground employees to be paid from District revenues.
11. Special assessments-----	47-1101	47-134. Annual Federal payment.
12. Taxation of personal property-----	47-1201	
13. Enforcement of personal property by distraint or levy-----	47-1301	
14. Enforcement of personal property taxes by acquisition of lien-----	47-1401	
15. Income tax-----	47-1501	
16. Inheritance and estate taxes-----	47-1601	
17. Financial institutions, guaranty company, and public utility taxes-----	47-1701	
18. Insurance companies-----	47-1801	
19. Motor fuel tax-----	47-1901	
20. Dog tax-----	47-2001	
21. Private employment agency license-----	47-2101	
22. Public auction permits-----	47-2201	
23. General license law-----	47-2301	
24. Board of Tax Appeals-----	47-2401	
25. Miscellaneous provisions-----	47-2501	

### Chapter 1.—GENERAL PROVISIONS

Sec.
47-101. Fiscal year for District of Columbia—Commencement
47-102. Indebtedness not to be increased—Penalty.
47-103. Officers to give security.
47-104. Diversion of funds prohibited—Penalty.
47-105. "Antideficiency Act" applicable to the District of Columbia.
47-106. Apportionment of appropriations for contingent and miscellaneous expenses.
47-107. Appropriations for contingent expenses—Accounting.
47-108. Permanent appropriations repealed.
47-109. Permanent appropriations abolished.
47-110. Permanent appropriations continued.
47-111. Membership dues of District of Columbia employees to be specifically authorized.
47-112. Disbursing officer—Appointment—Bond—Duties.
47-113. Deputy disbursing officer—Duties—Bond.
47-114. Advances to the major and superintendent of police
47-115. Advances to director of public welfare.
47-116. Advances to chief probation officer of juvenile court.
47-117. Advances to superintendent of penal institutions.
47-118. Advances to librarian of Public Library.
47-119. Notification to disbursing officer of objections to allowance of disbursements.
47-120. Auditor—Duties—Bond.
47-121. Auditor—Countersigning checks.
47-122. Auditor's chief clerk, duties.
47-123. Auditor to audit all accounts.

§ 47-101 [20: 621]. Fiscal year for District of Columbia—Commencement.

The fiscal year of the District of Columbia shall commence on the first day of July in each and every year until otherwise provided by law. (Leg. Assem., Aug. 22, 1871, ch. 65.)

§ 47-102 [20: 622]. Indebtedness not to be increased—Penalty.

There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years, and by fine not exceeding ten thousand dollars. (June 11, 1878, 20 Stat. 108, ch. 180, § 13.)

#### CROSS REFERENCES

Commissioners may not anticipate taxes by sale or hypothecation, § 1-219  
General limitation on power of Commissioners, § 1-801.

§ 47-103 [20: 623]. Officers to give security.

All officers appointed by the President for the District, who, by virtue of the provisions of any law of Congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe. (R. S., D. C., § 87.)

#### CROSS REFERENCES

Bond of assessor, § 47-602.  
Bond of auditor, § 47-120.  
Bond of collector of taxes, § 47-302.  
Bond of disbursing officer, §§ 47-112, 47-113.

§ 47-104 [20: 624]. Diversion of funds prohibited—Penalty.

It shall not be lawful for the District authorities, or any person charged with the disbursements of



money in the District, to divert from its legitimate object any money levied or collected as taxes from the people of the District. Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor in office, and be dismissed therefrom. (R. S., D. C., §§ 116, 118.)

§ 47-105 [20: 625]. "Antideficiency Act" applicable to the District of Columbia.

The provisions of section 665 of title 31 of the Code of the Laws of the United States of America, known as the "Antideficiency Act," are hereby extended and made applicable in all respects to appropriations made for and expenditures of and to all of the officers and employees of the government of the District of Columbia. (June 26, 1912, 37 Stat. 184, ch. 182, § 9.)

#### CROSS REFERENCE

Commissioners may not anticipate taxes by sale or hypothecation, § 1-219.

#### STATUTORY REFERENCE

U. S. C., title 31, § 665, above referred to reads as follows: "No executive department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law. Nor shall any department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such executive department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communicated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than \$100 or by imprisonment for not less than one month. (R. S. § 3679; Mar. 3, 1905, ch. 1484, § 4, 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48.)"

§ 47-106 [20: 626]. Apportionment of appropriations for contingent and miscellaneous expenses.

The Commissioners of the District of Columbia shall, on or before the beginning of each fiscal year, so apportion appropriations made for contingent and miscellaneous expenses under the Metropolitan police, fire department, electrical department, and other offices or departments of the government of the District of Columbia as to prevent deficiencies in said appropriations. (July 1, 1902, 32 Stat. 561, ch. 1351.)

§ 47-107 [20: 627]. Appropriations for contingent expenses—Accounting.

All expenditures from appropriations made for contingent expenses of the District of Columbia shall be accounted for in the General Accounting Office as other expenditures for the District, and a detailed statement of such expenditures shall be reported to Congress in accordance with section 104 of title 5 of the Code of Laws of the United States. (Feb. 25, 1885, 23 Stat. 319, ch. 145; July 18, 1888, 25 Stat. 314, ch. 676; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

#### AMENDMENTS

The 1888 amendment repealed from the 1885 act the following: "That thereafter all appropriations made for contingent expenses of the District of Columbia shall be expended under the direction and in the sole discretion of the Commissioners."

The 1921 act transferred the duties of the Treasury in this matter to the General Accounting Office. The 1885 act provided for an accounting "in the Treasury Department."

#### STATUTORY REFERENCE

U. S. C., title 5, § 104, above referred to reads: "The head of each department shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts for all the moneys which may have been from time to time during the next preceding year expended by them. (R. S., § 193; May 29, 1928, ch. 901, § 1, 45 Stat. 986.)"

#### NOTES TO DECISIONS

##### POWERS OF COMPTROLLER GENERAL

No greater powers were given to the Comptroller General than had been enjoyed by his predecessors. *Mare v. Alexander* ((D. C.-Mass.), 2 Fed. (2d) 895, affd. 5 Fed. (2d) 964).

##### SHIPPING BOARD EMERGENCY FLEET CORPORATION

The Shipping Board Emergency Fleet Corporation organized as a private corporation under District of Columbia laws, is an entity distinct from the United States and its financial transactions are within the control of its own officers. Mandamus to subject a claim against it to the audit of the Comptroller General must therefore be refused. *United States ex rel. Skinner and Eddy Corp. v. McCarl* (275 U. S. 1, 72 L. Ed. 131, 48 Sup. Ct. 12)

§ 47-108 [20: 636a]. Permanent appropriations repealed.

(a) Effective July 1, 1935, such portion of any Acts as provide appropriations from the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are hereby repealed, and any balances remaining in, or but for this provision would accrue to, such accounts shall be covered into the Treasury of the United States to the credit of the District of Columbia. Any claims accruing on or after July 1, 1935, which but for this section properly would have been charged to these appropriation accounts shall, upon proper audit, be certified to Congress for appropriation, which is hereby authorized.

(b) (1) Militia fund from fines, District of Columbia (DCs592).

(2) Industrial Home School fund, District of Columbia (DCs463).

(3) Sanitary fund, District of Columbia (DCT619).

(4) New site and buildings, Industrial Home School, District of Columbia (DCs460).

(5) Payment to tenants excess rentals recovered by Rent Commission, District of Columbia (DCs087).



(6) Escheated estates relief fund, District of Columbia (DCs612).

(7) Redemption of tax-lien certificates, District of Columbia (DCt618).

(8) Washington special tax fund, District of Columbia (DCt623).

(9) Redemption of assessment certificates, District of Columbia (DCt617). (June 26, 1934, 48 Stat. 1230, ch. 756, § 13.)

#### STATUTORY REFERENCE

See note to U. S. C., title 31, § 725l.

§ 47-109 [20: 636b]. Permanent appropriations abolished.

(a) On and after July 1, 1935, appropriations for the District of Columbia appearing on the books of the Government and listed in subsection (b) of this section are abolished as such, and so much of the several Acts as provide for such appropriations is amended so as to authorize in lieu thereof annual definite appropriations, estimates for which shall be incorporated in the estimates of annual appropriations for the District of Columbia.

(b) (1) Refunding water rents, and so forth, District of Columbia (DCx602).

(2) Refunding taxes, District of Columbia (DCx601).

(3) Extension, and so forth, of streets and avenues, District of Columbia (fiscal year) (DC-114).

(4) Policemen and Firemen's Relief Fund, District of Columbia (DCt614). (June 26, 1934, 48 Stat. 1230, ch. 756, § 14.)

#### STATUTORY REFERENCE

See note to U. S. C., title 31, § 725m.

§ 47-110 [20: 636c]. Permanent appropriations continued.

(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided*, That, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further*, That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further*, That on June 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section

725p of Title 31, of the Code of Laws of the United States such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims therefor shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown," directed to be established in section 725p of Title 31, of the Code of Laws of the United States.

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia (DCt620).

(55) Miscellaneous trust-fund deposits, District of Columbia (DCt613).

(56) Surplus fund, District of Columbia (DCt621).

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act (DCt604).

(58) Inmates' fund, workhouse and reformatory, District of Columbia (DCt605).

(79) Matured obligations of the District of Columbia (2t070).

(c) (3) Teachers' Retirement Fund Deductions, District of Columbia (DCt624).

(4) Teachers' Retirement Fund, Government Reserves, District of Columbia (DCt627). (June 26, 1934, 48 Stat. 1233-1235, ch. 756, § 20.)

#### STATUTORY REFERENCE

See U. S. C., title 31, § 725s.

§ 47-111 [20: 637]. Membership dues of District of Columbia employees to be specifically authorized.

No money appropriated by any Act of Congress shall be expended for membership fees or dues of any officer or employee of the District of Columbia in any society or association or for expenses of attendance of any person at any meeting or convention of members of any society or association, unless such fees, dues, or expenses are authorized to be paid by specific appropriations for such purposes or are provided for in express terms in some general appropriation. (June 26, 1912, 37 Stat. 184, ch. 182, § 8.)

§ 47-112 [20: 638]. Disbursing officer—Appointment—Bond—Duties.

The disbursing officer shall be appointed by the Commissioners, and shall give bond to the United States in the sum of fifty thousand dollars, for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and all persons interested conditioned for the faithful performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands, which bond shall be approved by the said Commissioners and the Secretary of the Treasury and be filed in the office of the Secretary of the Treasury: *Provided*, That advances in money shall be made, on the requisition of said Commissioners, to the said disbursing officer instead of to the Commissioners, and he shall account for the same as required by section



47-309. Said disbursing officer shall be subordinate to the commissioners, and they shall in every respect be responsible to the United States, the District of Columbia, and to individuals for the acts and doings of said disbursing officer.

The disbursing officer is authorized to pay laborers and employees of the District of Columbia, and such payments shall be made upon pay rolls or other vouchers audited and approved by the auditor of the District of Columbia, and certified by the Commissioners as required by section 47-309. Said pay rolls and other vouchers shall be included in the account of the Commissioners.

The accounts of the disbursing officer shall be audited by the auditor of the District of Columbia, who shall promptly forward the same to the Commissioners for their approval. (Mar. 3, 1891, 26 Stat. 1064, ch. 546; July 14, 1892, 27 Stat. 151, ch. 171; June 30, 1898, 30 Stat. 526, ch. 540.)

#### AMENDMENT

This section is a composite of credits cited in the history line.

#### CROSS REFERENCE

Requisitions and vouchers, § 47-310.

#### NOTES TO DECISIONS

##### IN GENERAL

This section does not impose responsibility for the faults of the disbursing clerk upon the auditor. *District of Columbia v. Petty* (229 U. S. 593, 57 L. Ed. 1343, 33 Sup. Ct. 881).

#### § 47-113 [20: 639]. Deputy disbursing officer—Duties—Bond.

The deputy disbursing officer shall, in the absence of the disbursing officer, be authorized to transact all duties pertaining to said disbursing officer, and shall be required to give bond to the said disbursing officer in the sum of twenty-five thousand dollars, conditioned on the faithful performance of the duties of his office, but said disbursing officer to be responsible to the United States, District of Columbia, and the people whom he pays, as required by law. (June 6, 1900, 31 Stat. 555, ch. 789.)

#### § 47-114 [20: 640]. Advances to the major and superintendent of police.

The disbursing officer of the District of Columbia may advance to the major and superintendent of the Metropolitan police, upon requisitions previously approved by the auditor of the District of Columbia, from the appropriation for miscellaneous and contingent expenses of the Metropolitan police department of the District of Columbia, sums of money, not exceeding three hundred dollars at any one time, to be used only for the prevention and detection of crime, and to be accounted for monthly on itemized vouchers to the accounting officers of the District of Columbia. (Apr. 27, 1904, 33 Stat. 381, ch. 1628.)

#### § 47-115 [20: 641]. Advances to director of public welfare.

The disbursing officer of the District of Columbia is authorized to advance to the director of public welfare, upon requisitions previously approved by the auditor of the District of Columbia and upon such security as may be required of said director by the com-

missioners, sums of money not to exceed \$400 at any one time, to be used for expenses in placing and visiting children, traveling on official business of the board, and for office and sundry expenses, all such expenditures to be accounted for to the accounting officers of the District of Columbia within one month on itemized vouchers properly approved. (Feb. 25, 1929, 45 Stat. 1289, ch. 314.)

#### COMPILER'S NOTE

This section is repeated in the District of Columbia Appropriation Act for 1933 (47 Stat. 370, ch. 308) and in the Appropriation Act for 1934 (June 16, 1933, 48 Stat. 243, ch. 93) and thereafter, including the act for 1941 (June 12, 1940, 54 Stat. 326, ch. 333, § 1).

#### § 47-116 [20: 642]. Advances to chief probation officer of juvenile court.

The disbursing officer of the District of Columbia is authorized to advance to the chief probation officer of the juvenile court upon requisition previously approved by the judge of the juvenile court and the auditor of the District of Columbia, sums of money not to exceed \$50 at any one time, to be expended for transportation and traveling expenses to secure the return of absconding probationers, and to be accounted for monthly on itemized vouchers to the accounting officer of the District of Columbia. (Feb. 25, 1929, 45 Stat. 1286, ch. 314.)

#### COMPILER'S NOTE

This section is repeated in the District of Columbia Appropriation Act for 1933 (47 Stat. 367, ch. 308) and in the Appropriation Act for 1934 (48 Stat. 240, ch. 93) and thereafter, including the act for 1941 (June 12, 1940, 54 Stat. 324, ch. 333, § 1).

#### § 47-117 [20: 643]. Advances to superintendent of penal institutions.

The disbursing officer of the District of Columbia is authorized to advance to the general superintendent of penal institutions, upon requisitions previously approved by the auditor of the District of Columbia, and upon such security as the commissioners may require of said superintendent, sums of money not exceeding \$100 at one time, to be used only for expenses in returning escaped prisoners, payable from the maintenance appropriations for the workhouse and reformatory, all such expenditures to be accounted for to the accounting officers of the District of Columbia within one month on itemized vouchers properly approved. (Feb. 25, 1929, 45 Stat. 1286, ch. 314.)

#### COMPILER'S NOTE

The District of Columbia Appropriation Acts for 1933 and 1934 (47 Stat. 370, ch. 308 and 48 Stat. 244, ch. 93), repeated this authority but increased to \$200 the sum that might be advanced. It was increased to \$300 in the act for 1940 (July 15, 1939, 53 Stat. 1026, ch. 281) and for 1941 (June 12, 1940, 54 Stat. 327, ch. 333, § 1).

#### § 47-118 [20: 643a]. Advances to librarian of Public Library.

The disbursing officer of the District of Columbia is authorized to advance to the librarian of the free Public Library, upon requisition previously approved by the auditor of the District of Columbia, sums of money not exceeding \$25 at the first of each month, to be expended for the purchase of certain books, pamphlets, numbers of periodicals or newspapers, or other printed material, and to be accounted for on



itemized vouchers. (Feb. 23, 1931, 46 Stat. 1380, ch. 282.)

#### COMPILER'S NOTE

This provision is repeated in the District of Columbia Appropriation Act for 1934, June 16, 1933 (48 Stat. 225, ch. 93) and thereafter, including the act for 1941 (June 12, 1940, 54 Stat. 313, ch. 333, § 1).

§ 47-119 [20: 644]. Notification to disbursing officer of objections to allowance of disbursements.

When differences arise in the examination of the accounts of the disbursing officer of the District of Columbia, calling for the suspension of any item in said accounts, it shall be the duty of the General Accounting Office to notify the auditor of the District of Columbia in connection with the disbursing officer of the District of Columbia of the grounds of such objections resulting in said suspensions, in order that said auditor in connection with said disbursing officer may by explanation if possible remove said grounds of suspension. (July 1, 1902, 32 Stat. 592, ch. 1352; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

#### AMENDMENT

The 1921 act created the General Accounting Office. The 1902 act contained the words "Auditor for the State and other departments who settles said accounts" in place of the present words "General Accounting Office."

#### CROSS REFERENCE

Adjustment of controverted accounts, § 47-309.

§ 47-120 [20: 645]. Auditor—Duties—Bond.

It shall be the duty of the auditor of the District of Columbia to audit all accounts against the said District, and also approve and certify the same. He shall keep a record of all bills certified by him, their amounts, the appropriation to which they are chargeable, and the date of approval. He shall retain in his office the originals of all contracts and agreements not otherwise provided for. He shall also examine and audit all accounts, not otherwise provided for by law. He shall countersign all warrants if he shall find the same correct, and shall give bond, to be approved by the Commissioners in the sum of twenty thousand dollars, conditioned for the faithful discharge of the duties of his office. (Leg. Assem., Aug. 23, 1871, ch. 108, § 10, p. 146.)

#### CROSS REFERENCES

- Approval of advances to public library, § 47-118.
- Audit of accounts of clerk of juvenile court, § 11-940.
- Audit of accounts of clerk of police court, § 11-627.
- Audit of benefits paid under Unemployment Compensation Act, § 46-308.
- Audit of workmen's unemployment compensation funds, § 46-304.
- Control over "Miscellaneous Trust Fund Deposits," § 47-311.
- Custodian of insurance deposits, § 35-416.
- Duty to audit accounts of nurses' examining board, § 2-408.
- General limitation on power of Commissioners, § 1-801.

§ 47-121 [20: 646]. Auditor—Countersigning checks.

The auditor of the District of Columbia shall continue to prepare and countersign all checks issued by the disbursing officer, and no check involving disbursement of public moneys by the disbursing officer

shall be valid unless countersigned by the auditor of the District of Columbia. (July 1, 1902, 32 Stat. 592, ch. 1352.)

§ 47-122 [20: 647]. Auditor's chief clerk, duties.

The chief clerk (of the auditor's office) shall after March 2, 1911, in the necessary absence or inability from any cause of the auditor, perform his duties without additional compensation, and shall during the presence of the auditor perform such duties as shall be prescribed by the auditor; and the auditor may require the said chief clerk to give bond for the faithful performance of such duties; but the auditor shall in every respect be responsible to the United States, the District of Columbia, and to individuals, as now provided by law. (Aug. 6, 1890, 26 Stat. 295, ch. 724; Mar. 2, 1911, 36 Stat. 969, ch. 192.)

#### AMENDMENT

Both acts are appropriation acts. The later one merely rewords the earlier one.

§ 47-123 [20: 648]. Auditor to audit all accounts.

All accounts for the disbursement of appropriations made either from the revenues of the District of Columbia or jointly from the revenues of the United States and the District of Columbia shall be audited by the auditor of the District of Columbia before being transmitted to the General Accounting Office, unless otherwise specifically provided in the law making such appropriations: *Provided*, That this provision shall not apply to disbursements on account of the court of appeals and the District Court of the United States for the District of Columbia, and for interest and sinking fund on the funded debt of the District of Columbia, which disbursements shall continue to be audited as heretofore provided by law. (June 30, 1898, 30 Stat. 526, ch. 540; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

#### COMPILER'S NOTE

The 1921 act provides for the General Accounting Office.

#### CROSS REFERENCE

Audit of accounts of disbursing officer, § 47-112.

§ 47-124 [20: 649]. Amount of disbursing officers' outstanding checks to be deposited in Treasury.

At the beginning of each fiscal year, or as soon thereafter as may be practicable, the respective amounts represented by checks drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, which have remained outstanding, unsatisfied, and unpaid for three years or more, shall be deposited by the treasurer of the United States and covered back into the treasury by warrant to the credit of a permanent appropriation account to be denominated "Outstanding liabilities, District of Columbia," and shall be carried to the credit of the respective parties in whose favor such checks were issued upon the books of the auditor of the District of Columbia, in like manner as the amounts represented by checks of disbursing officers of the United States which have remained outstanding, unsatisfied, and unpaid for three years or more are covered back into the treasury. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 1.)



§ 47-125 [20: 650]. Disbursing officer's checks—Payment to holders of outstanding checks.

The payee or bona fide holder of any check drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, the amount of which has been so covered back into the Treasury of the United States, shall, upon application accompanied with competent and sufficient proof, and the surrender of such check, be paid the amount thereof from the said appropriation account to be denominated "Outstanding liabilities, District of Columbia," upon a claim therefor duly audited and approved by the auditor of the District of Columbia, subject to like conditions and provisions as those imposed and required by the Revised Statutes of the United States, with respect to the payment of amounts represented by checks of disbursing officers of the United States which have been covered back into the Treasury to the credit of outstanding liabilities. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 2.)

STATUTORY REFERENCE

See R. S. § 306, U. S. C., title 31, § 149.

§ 47-126 [20: 651]. Fees collected to be paid into Treasury of the United States.

Fees collected by the District of Columbia shall be paid for each fiscal year into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law, as follows, namely, fees of superintendent of weights, measures, and markets; fees of surveyor's office; health department fees; pound fees; fees for railing permits; fees for building permits; fees for electrical permits; bathing beach fees; fees from public convenience stations; fees for tax certificates; fees of the municipal court; and fees collected by the building inspection division on account of permits, certificates, and transcripts of records issued by the inspector of buildings; fees and emoluments of the offices of the recorder of deeds and the register of wills; together with the tuition of nonresident pupils in public schools. (June 26, 1912, 37 Stat. 184, ch. 182, § 10; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1; June 7, 1926, 44 Stat. 697, ch. 480.)

COMPILER'S NOTE

This section has been reworded by the compiler to express the present state of the law. It formerly made provision for payment of fees into the Treasury to the credit of the United States and the District of Columbia in the same proportion as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. It is believed that these provisions no longer apply, see acts 1922, 42 Stat. 668, 669, ch. 249, § 1, which provided as follows:

"Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, \* \* \* and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the

two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, \$9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. 307, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

Section 10 of the act of 1912 closed with a clause reading as follows: "and the annual wheel tax on all automobiles or other motor vehicles." This tax is no longer being collected and the above-quoted words were deleted as obsolete.

AMENDMENTS

The 1912 act provided that the payments should be credited equally to the District and the United States.

The 1921 act provided fees "paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia."

The act of Apr. 24, 1926, related to the fees of the offices of register of wills and recorder, see §§ 19-404, 45-709.

The provision of the 1912 act including "The tax of one-half of one cent paid by any street or other railroad company for each passenger carried across the Highway Bridge" was deleted by the June 7, 1926, act.

CROSS REFERENCES

The Federal Government now makes a lump-sum appropriation for the District, § 47-134.

Refund of building permit fee, § 5-430.

Tuition for nonresidents, "nonresidents" defined, disposition of tuition, § 31-301.

§ 47-127 [20: 652]. Fees of inspector of gas and meters and harbor master.

All fees collected by the inspector of gas and meters and the harbor-master and amounts collected for leases of streets and reservations and wharf charges shall be paid to the collector for payment into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (July 18, 1888, 25 Stat. 316, ch. 676; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CROSS REFERENCE

See amendment note to § 47-126.



§ 47-128 [20: 653]. Market rents, fees, and income to be paid to collector of taxes.

All rents, fees, and income derived from the markets operated by the District of Columbia shall be paid to the collector of taxes; and no person employed by the District of Columbia in or about the said markets shall receive any fees or compensation of any kind in addition to the salary provided by law. (June 11, 1896, 29 Stat. 394, ch. 419.)

§ 47-129 [20: 654]. Assessment and permit work—Credit of collections.

All collections for work done under the assessment and permit system shall be deposited by the collector of taxes in the treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Mar. 2, 1911, 36 Stat. 975, ch. 192; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

#### CROSS REFERENCES

See compiler's note to § 47-126.

Construction or repair of streets, sidewalks, and sewers under permit plan, §§ 7-608, 7-609.

Special assessments generally, § 47-1101 and notes.

§ 47-130 [20: 655]. Receipts to be credited to United States and District of Columbia in proportion to fiscal year appropriations.

All fees, fines, and other miscellaneous items of revenue prior to July 1, 1921, required by law to be paid into the treasury of the United States to the credit of the District of Columbia, unless otherwise provided by law; and all collections on account of special assessments for public improvements for which assessments are levied according to the law shall be paid into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

#### CROSS REFERENCES

See compiler's note to § 47-126.

Federal Government now makes a lump-sum appropriation for the District, § 47-134.

Ownership of revenue derived from property owned by the United States, § 47-502.

#### STATUTORY REFERENCE

This section is in U. S. C., title 31, § 491.

§ 47-131 [20: 656]. Working capital for industrial enterprises at workhouse and reformatory.

To provide working capital for industrial enterprises at the workhouse and the reformatory, the commissioner shall transfer to a fund, to be known as the working-capital fund, such amounts appropriated herein (45 Stat. 1262) for the workhouse and reformatory, not to exceed \$50,000 as are available for industrial work at these institutions. The various departments and institutions of the District of Columbia and the federal government may purchase, at fair market prices, as determined by the commissioners, such industrial or farm products as meet their requirements. Receipts from the sale of such products shall be deposited to the credit of said working-capital fund, and the said fund, including all receipts credited thereto, may be used as a revolving fund during the fiscal year 1930. This fund shall be available for the purchase and repair of machinery and equipment, for the purchase of raw

materials and manufacturing supplies, for personal services and for the payment to the inmates or their dependents of such pecuniary earnings as the commissioners may deem proper. The commissioners shall include in their annual report to Congress a detailed report of the receipts and expenditures on account of said working-capital fund. (Feb. 25, 1929, 45 Stat. 1290, ch. 314.)

#### COMPILER'S NOTE

The District of Columbia Appropriation Act for 1934 (June 16, 1933, 48 Stat. 244, ch. 93) provided: "To provide a working capital fund for such industrial enterprises as may be approved by the Commissioners of the District of Columbia, \$35,000: *Provided*, That the various departments and institutions of the District of Columbia and the Federal Government may purchase, at fair market prices, as determined by the Commissioners, such surplus products and services as meet their requirements; receipts from the sale of products and services shall be deposited to the credit of said working capital fund, and said fund, including all receipts credited thereto, shall be used as a revolving fund for the fiscal year 1934 for the purchase and repair of machinery, tools, and equipment, purchase of raw materials and manufacturing supplies, purchase, maintenance, and operation of nonpassenger-carrying vehicles, purchase and maintenance of horses, and purchase of fuel for manufacturing purposes; for freight, personal services, and all other necessary expenses; and for the payment to inmates or their dependents of such pecuniary earnings as the Commissioners may deem proper."

§ 47-132 [20: 657]. Money received from sale of animals and materials to be paid into Treasury.

All moneys received from the sales of animals or materials of any sort, purchased under appropriations made for the District of Columbia since July 1, 1878, other than for the water department, shall be paid into the treasury of the United States, to the credit of the District unless otherwise provided by law. (Mar. 2, 1889, 25 Stat. 808, ch. 370, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

#### CROSS REFERENCE

See compiler's note to § 47-126 and § 47-134.

§ 47-133 [20: 658]. Appropriations for playground employees to be paid from District revenues.

The appropriations for salaries of employees of the playgrounds shall be paid wholly out of the revenues of the District of Columbia. (June 26, 1912, 37 Stat. 153, ch. 182.)

§ 47-134 [20: 670b]. Annual Federal payment.

For the fiscal year ending June 30, 1940, and for each fiscal year thereafter, there is hereby authorized to be appropriated, as the annual payment by the United States toward defraying the expenses of the government of the District of Columbia, the sum of \$6,000,000. (July 26, 1939, 53 Stat. 1085, ch. 367, title I; June 12, 1940, 54 Stat. 307, ch. 333, § 1.)

#### COMPILER'S NOTES

The former law, the act of June 29, 1922, 42 Stat. 668, ch. 249 (D. C. 1929, title 20, § 670a) has been repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8. It provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States, except such items of expense as Congress may direct shall be paid on another basis."



## AMENDMENT

This section was repeated in the Appropriation Act of 1940.

## CROSS REFERENCES

Advancement of funds, § 47-2501.

Apportionment of cost of construction and repair of public roadways and bridges, § 7-604.

This section is part of the Revenue Act of 1939, see compiler's notes to § 47-1401.

## Chapter 2.—BUDGET ESTIMATES

Sec.

- 47-201. Salaries of force for protection of courthouse—Payment—Estimates.
- 47-202. Estimates—Repairs to schools.
- 47-203. Estimates for schools to be in accordance with 5-year building program.
- 47-204. Certain expenses of the District Court of the United States for the District of Columbia.
- 47-205. Commissioners annual estimates—To include report of assignment of certain market employees.
- 47-206. Estimates for employees and for maintenance of sewers.
- 47-207. Estimates for employees for maintenance of highway bridge and approaches.
- 47-208. Estimates for witnesses and securing evidence in claims against the District of Columbia.
- 47-209. Estimates for assessment of real estate.
- 47-210. Estimates for water department.
- 47-211. Estimates for expenses of District—Order of arrangement.
- 47-212. Publication of estimates of the District.

§ 47-201 [20: 659]. Salaries of force for protection of courthouse—Payment—Estimates.

The salaries of the force necessary for the care and protection of the courthouse in the District of Columbia and of the salary of the Superintendent of the Washington Asylum and Jail shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided, and estimates for such expenses shall each year hereafter be submitted in the annual estimates for the expenses of the government of the District of Columbia. (July 31, 1894, 28 Stat. 202, ch. 174; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 29, 1922, 42 Stat. 663, ch. 249; Aug. 17, 1937, ch. 690, title X, as added by May 16, 1938, 52 Stat. 375, ch. 223, § 8; June 25, 1938, 52 Stat. 1125, ch. 681, § 1.)

## AMENDMENTS

The 1911 amendment combined the Washington jail and the Washington asylum into one institution called, "Washington Asylum and Jail."

The act of June 29, 1922, cited to the text, which formed the basis for percentage liabilities, was repealed by the act of May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to the act of Aug. 17, 1937, 50 Stat. 673, ch. 690. The repealing act does not provide any substitute provision, and the 1922 act contains a provision repealing all prior inconsistent acts. However, acts making appropriations for the Departments of State, Commerce, and Justice, and for the judiciary, have, since the act of Apr. 27, 1938, 52 Stat. 265 ch. 180, § 1, down to and including the act of May 14, 1940, 54 Stat. 207, ch. 139, § 1, contained the following provision: "Sixty per centum of the expenditures for the District Court of the United States for the District of Columbia from all appropriations under this title and 30 per centum of the expenditures for the United States Court of Appeals for the District of Columbia from all appropriations under this title shall be re-

imbursed to the United States from any funds in the Treasury to the credit of the District of Columbia."

The Deficiency Appropriation Act of June 25, 1938, 52 Stat. 1125, ch. 681, § 1, and other such acts including the Second Deficiency Appropriation Act of June 27, 1940, 54 Stat. 639, ch. 437, contained the following language: "The foregoing sums for the District of Columbia, unless otherwise therein specifically provided, shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided."

It may also be noted that there is now made a lump-sum appropriation, July 29, 1939, 53 Stat. 1085, ch. 367, title I (§ 47-134).

§ 47-202 [20: 660]. Estimates—Repairs to schools.

A detailed statement of the expenditure of the appropriation made for repairs and improvements to school buildings and grounds and for repairing and renewing heating, plumbing, and ventilating apparatus, and installation of sanitary drinking fountains in buildings not supplied with same, and the taking down, transferring, and the re-erection of portable schools shall be submitted with the annual estimates. (Mar. 3, 1915, 38 Stat. 910, ch. 80.)

## COMPILER'S NOTE

The act of June 10, 1921, 42 Stat. 23, ch. 13, provided for the General Accounting Office.

§ 47-203 [20: 661]. Estimates for schools to be in accordance with 5-year building program.

Estimates of expenditures for buildings and grounds for the public schools of the District of Columbia, shall hereafter be prepared in accordance with the provisions of the Act of Congress approved February 26, 1925. (Feb. 26, 1925, 43 Stat. 994, ch. 342, § 9.)

## COMPILER'S NOTE

The act of February 26, 1925, referred to in the text is omitted from the code, except § 5 which is classified as § 31-804 and § 9 which is this section.

## CROSS REFERENCE

Division of funds and expenditures, see compiler's note to § 47-201.

§ 47-204 [20: 662]. Certain expenses of District Court of the United States for the District of Columbia.

Sixty per centum of the expenditures for all of the expenses of the District Court of the United States for the District of Columbia mentioned below, to wit, fees of witnesses, fees of jurors, pay of bailiffs and criers, including salaries of deputy marshals who act as bailiffs or criers, and all miscellaneous expenses of said court, shall be reimbursed to the United States from any funds in the Treasury to the credit of the District of Columbia: *Provided*, That estimates for like expenditures for each fiscal year shall be submitted to the Commissioners of the District of Columbia for transmission with the annual estimates of the District of Columbia. (June 30, 1906, 34 Stat. 763, ch. 3914, § 7; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 29, 1922, 42 Stat. 663, ch. 249; Aug. 17, 1937, ch. 690, title X, as added by May 16, 1938, 52 Stat. 375, ch. 223, § 8; June 25, 1938, 52 Stat. 1125, ch. 681, § 1.)

## AMENDMENT

The 1921 act provided for the General Accounting Office.



§ 47-205 [20: 663]. Commissioners' annual estimates—To include report of assignment of certain market employees.

The commissioners each year in the annual estimates shall report to Congress the assignment of the market masters, assistant market masters, watchmen, and laborers to the various markets and offices. (July 11, 1919, 41 Stat. 70, ch. 7.)

§ 47-206 [20: 664]. Estimates for employees and for maintenance of sewers.

Estimates in detail shall be submitted annually for the employment of mechanics, laborers, and watchmen, and the purchase of coal, oils, waste, and other supplies for the maintenance of sewers. (June 27, 1906, 34 Stat. 494, ch. 3553.)

#### CROSS REFERENCE

Jurisdiction and control over public way and sewers, § 7-102.

§ 47-207 [20: 665]. Estimates for employees for maintenance of highway bridge and approaches.

Estimates in detail shall be submitted annually for salaries of employees, lighting, power, and miscellaneous supplies and expenses of every kind necessarily incident to the operation and maintenance of the highway bridge and approaches. (June 27, 1906, 34 Stat. 492, ch. 3553.)

#### CROSS REFERENCE

Jurisdiction and control over public ways, § 7-102.

§ 47-208 [20: 666]. Estimates for witnesses and securing evidence in claims against the District of Columbia.

The estimates for expenses incurred on account of the District of Columbia in the examination of witnesses and procuring of evidence in the matter of claims against the District of Columbia pending in any department shall be submitted in the annual estimates for the District of Columbia. (Aug. 4, 1886, 24 Stat. 252, ch. 902, § 1.)

§ 47-209 [20: 667]. Estimates for assessment of real estate.

The commissioners of said District shall in their annual estimates include all necessary provision to carry out the provisions of law relative to the assessment of real estate, to be immediately available. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 14.)

§ 47-210 [20: 668]. Estimates for water department.

It shall be the duty of the commissioners to include in the annual estimates of the District of Columbia estimates of the expenses of the water department. (Mar. 3, 1881, 21 Stat. 466, ch. 134, § 1.)

#### CROSS REFERENCE

Water supply, § 43-1501 et seq.

§ 47-211 [20: 669]. Estimates for expenses of District—Order of arrangement.

The estimates for expenses of the government of the District of Columbia shall be prepared and submitted each year according to the order and arrangement of the appropriation act for the year preceding, and any change in such order and arrangement and

transfers of salaries from one office or department to another desired by the commissioners may be submitted by note in the estimates. (July 1, 1902, 32 Stat. 616, ch. 1352, § 4.)

§ 47-212 [20: 670]. Publication of estimates of the District.

The annual estimates for expenses of the District of Columbia shall not be published in advance of their submission to Congress at the beginning of each regular session thereof. (Mar. 3, 1909, 35 Stat. 728, ch. 250, § 7.)

### Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

#### Sec.

- 47-301. Collector of taxes—To collect all revenues.
- 47-302. Collector of taxes—Bond.
- 47-303. Deputy collector of taxes—Duties—Bond.
- 47-304. Cashier in collector's office—Duties—Responsibility.
- 47-305. Account books to be kept by collector.
- 47-306. Certificate of tax assessor as to taxes and assessments due—Fee.
- 47-307. Waiver of interest and penalties.
- 47-308. Collector may omit uncollectible taxes from record of assets.
- 47-309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.
- 47-310. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.
- 47-311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

§ 47-301 [20: 628]. Collector of taxes—To collect all revenues.

The collector of taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States. (Mar. 3, 1881, 21 Stat. 460, ch. 134.)

#### CROSS REFERENCES

Representative in department of vehicles and traffic for taxation of motor vehicles, § 40-706.

Time for payment, delinquency, § 47-1209.

§ 47-302 [20: 629]. Collector of taxes—Bond.

The collector of taxes before entering upon his duties shall execute a bond in the sum of one hundred thousand dollars, with sufficient surety or sureties, to be approved by the commissioners, conditioned for the faithful performance of the duties of his office. (Leg. Assem., Aug. 23, 1871, ch. 108, § 7; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

#### AMENDMENTS

The salary now paid is governed by the Classification Act of 1923 (U. S. C., title 5, § 673).

The 1874 act vested authority in the Commissioners.

§ 47-303 [20: 630]. Deputy collector of taxes—Duties—Bond.

The deputy collector of taxes shall perform such duties as may be required of him by the collector, and the collector may require the said deputy collector to give bond for the faithful performance of his duties; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (June 11, 1896, 29 Stat. 394, ch. 419.)



**§ 47-304 [20: 631]. Cashier in collector's office—Duties—Responsibility.**

The cashier (in the collector's office) shall, in the necessary absence or inability of the collector, from any cause, perform his duties without any additional compensation; and the collector may require the said cashier to give bond for the faithful performance of such duties during the absence or inability of the collector; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (Aug. 6, 1890, 26 Stat. 294, ch. 724.)

**§ 47-305 [20: 632]. Account books to be kept by collector.**

It shall be the duty of the collector to keep in his office account books, in which shall be entered: First, the dates of payment of all taxes; second, the amounts paid; third, the names of the persons by whom payment has been made; fourth, the years paid for; fifth, the property paid on; and sixth, the names of the persons to whom assessed. His books shall at all times be open to the inspection of any officer who may be authorized by the commissioners to examine the same. (Leg. Assem., Aug. 23, 1871, ch. 103, § 1; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

**AMENDMENT**

The 1874 act created and vested authority in the Commissioners.

**§ 47-306 [20: 633]. Certificate of tax assessor as to taxes and assessments due—Fee.**

The collector of taxes shall furnish whenever called upon, a certified statement, over his hand and official seal, of all taxes and assessments, general and special, that may be due at the time of making said certificate; and said certificate when furnished shall be a bar to the collection and recovery from any subsequent purchaser of any tax or assessment omitted from and which may be a lien upon the real estate mentioned in said certificate, and said lien shall be discharged as to such subsequent purchaser, but shall not affect the liability of the person who owned the property at the time such tax was assessed to pay the same, mentioned in said certificate. The charge for each certificate of taxes so issued shall be one dollar. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 3, 1925, 43 Stat. 1222, ch. 477; June 25, 1938, 52 Stat. 1262, ch. 702, § 11.)

**COMPILER'S NOTE**

The duty to prepare list of property sold for taxes for public inspection imposed upon the collector of taxes by the act of March 3, 1917, 39 Stat. 1005, ch. 160, has now been transferred to the assessor by the act of June 25, 1938, 52 Stat. 1202, ch. 702, § 11 (§ 47-603).

**AMENDMENTS**

The 1879 act provided that those duties be performed by the collector of taxes.

The 1892 act transferred these duties to the assessor.

The 1917 act transferred them back to the collector of taxes.

The 1925 act added the last sentence.

The 1938 act transferred the duties back to the assessor.

**§ 47-307 [20: 746f]. Waiver of interest and penalties.**

The Commissioners of the District of Columbia are authorized, in their discretion, to waive, in whole or in part, interest or penalties, or both, on unpaid taxes and special assessments due the District of Columbia, when, in their judgment, such action would be equitable or just or in the public interest. (June 25, 1938, 52 Stat. 1201, ch. 702, § 7.)

**CROSS REFERENCE**

Refund of taxes and fees, § 47-1016 et seq.

**§ 47-308 [20: 747]. Collector may omit uncollectible taxes from record of assets.**

The Commissioners of the District of Columbia are authorized to direct the collector of taxes of the District of Columbia to omit from his records as assets of the District of Columbia any and all taxes, real and personal, and all special assessments which the Commissioners may determine are uncollectible, but such determination on the part of the Commissioners or the failure of the collector to carry such taxes on his records as assets shall not affect the liability of the taxpayer for the payment of said taxes. (June 25, 1938, 52 Stat. 1202, ch. 702, § 10.)

**§ 47-309 [20: 634]. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.**

All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said commissioners, or a majority of them; and the accounts of said commissioners, and the tax collectors, and all other officers required to account, shall be settled and adjusted by the General Accounting Office. (June 11, 1878, 20 Stat. 105, ch. 180, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 305.)

**AMENDMENT**

The 1921 act provided for the creation and duties of the General Accounting Office.

**CROSS REFERENCES**

Adjustment of controverted disbursements, § 47-119.

General limitation on power of Commissioners, § 1-801.

**§ 47-310 [20: 635]. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.**

All moneys appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of section 47-309, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia (except that the moneys appropriated for interest and the sinking fund shall be drawn therefrom only on the requisition of the Treasurer of the United States), such requisition specifying the appropriation upon which the same is drawn; and in no case shall such appropriation be exceeded either in requisition or expenditure; and the accounts for all disbursements of the Commissioners of said Dis-



trict shall be made monthly to the General Accounting Office by the auditor of the District of Columbia, on vouchers certified by the Commissioners, as required by law. (July 1, 1882, 22 Stat. 144, ch. 263, § 3; Mar. 3, 1883, 22 Stat. 470, ch. 95, § 2; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

## AMENDMENTS

This section was enacted by the 1882 Appropriations Act and re-enacted by the 1883 Appropriations Act.

The 1921 act provided for the creation and duties of the General Accounting Office.

## CROSS REFERENCE

Disbursement officer, § 47-112 et seq.

§ 47-311 [20: 636]. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

All moneys received by the collector of taxes of the District of Columbia in the nature of trust-fund deposits, the disposition of which is not provided for by law, and which had been on April 27, 1904, deposited by said collector with the Treasurer of the United States to the official credit of the disbursing officer of the District of Columbia, shall be deposited by the said collector in the Treasury of the United States to the credit of a permanent appropriation account, to be known and designated as "Miscellaneous trust-fund deposits, District of Columbia."

Necessary advances from said permanent appropriation account shall be made by the Secretary of the Treasury to the disbursing officer of the District of Columbia, upon requisition of the commissioners, for such amounts as may be required from time to time for necessary disbursements. The said disbursing officer shall make disbursements from such advances only upon itemized vouchers duly audited and approved by the auditor of the District of Columbia, and the accounts of said disbursing officer for all such disbursements shall be rendered to and audited by the General Accounting Office.

It shall be the duty of the auditor of the District of Columbia to keep separate accounts with each depositor for all trust-fund deposits received and deposited in accordance with the provisions of this section, showing the amounts received and deposited and the payments made on each individual account. (Apr. 27, 1904, 33 Stat. 368, ch. 1628; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

## AMENDMENT

The 1921 act provided for the creation and duties of the General Accounting Office.

## Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

Sec.

- 47-401. Squares, lots, blocks, parcels, to be numbered—City of Washington.
- 47-402. Designation to be official.
- 47-403. Daily transcript from records of recorder of deeds and register of wills.
- 47-404. Designation of land for assessment—Beyond city limits.
- 47-405. Designation of land to be numbered.
- 47-406. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

Sec.

- 47-407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.
- 47-408. Designation given to land sufficient for tax sales purposes.
- 47-409. Sale of property belonging to the United States—Report of sale.

§ 47-401 [20: 671]. Squares, lots, blocks, parcels to be numbered—City of Washington.

For the purposes of facilitating assessment and taxation of real estate in the District of Columbia, the following system of designating the several parcels of land therein is hereby prescribed, and every designation given in conformity with said system shall be a sufficient description of the parcel of land to which it relates, for all purposes of assessment and collection of taxes and assessments of every kind:

Each square in the city of Washington shall bear a number or other designation that will distinguish it from every other square in said city.

Each lot or parcel of ground in each such square shall bear a number or other designation that will distinguish it from every other lot or parcel of ground in such square.

Each block in each subdivision in said District outside of the limits of the city of Washington shall bear a number that will distinguish it from every other such block.

Each lot or parcel of land in each such block shall bear a number that will distinguish it from every other lot therein.

Each piece or parcel of unsubdivided land and each parcel of land deeded by metes and bounds in said District shall have a distinctive designation.

As nearly as practicable, in the judgment of the commissioners, the numbers in each of the aforesaid squares, blocks, or parcels of land requiring to be numbered shall be in a regularly increasing numerical sequence and order, beginning with the lowest number practicable; and, in case of the lots, shall commence at the same relative location in each of the squares, blocks, or parcels of land, and be continued in the same relative order.

It shall be the duty of the said commissioners to cause a record of the designations of the several aforesaid parcels of land to be made in accordance with the foregoing system, in the office of the surveyor of said District; and hereafter it shall be the duty of the surveyor, in giving numbers to blocks or lots of future subdivisions, to be governed by said system. (Mar. 3, 1899, 30 Stat. 1376, ch. 457, § 1.)

## COMPILER'S NOTE

Insofar as this section provides a numbering system for blocks, subdivisions, and parcels of land within the District but lying outside the City of Washington, it has been superseded by §§ 47-404 to 47-408.

## CROSS REFERENCE

Numbering of squares in "Georgetown," see amendment note to § 47-703.

§ 47-402 [20: 672]. Designation to be official.

The designation as prescribed in section 47-401 to each of said lots or parcels of land, which they shall respectively bear on the records of the assessor of said District at the time said lots or parcels be-



come subject to sale for arrears of any tax or assessment, shall be the official designation of said lots or parcels of land for the enforcement of the collection of all such arrears of general taxes and assessments for the tax year in which the said designation shall be given, and until such designation be changed pursuant to law. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 2.)

## CROSS REFERENCE

See compiler's note to § 47-401.

§ 47-403 [20: 673]. Daily transcript from records of recorder of deeds and register of wills.

The Commissioners of the District of Columbia shall cause to be made a daily transcript, and entry on the records of said assessor, of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds, and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcript shall for this purpose at all times during office hours have full access to the records of the recorder of deeds and the register of wills of said District; and the assessor shall daily furnish the surveyor with a copy of such transcript. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 3.)

## COMPILER'S NOTE

Insofar as this section provides a numbering system for blocks, subdivisions, and parcels of land within the District but lying outside the city of Washington, it has been superseded by § 47-407.

## CROSS REFERENCE

Transcript from surveyor's office, § 47-407.

§ 47-404 [20: 674]. Designation of land for assessment—Beyond city limits.

For the purpose of facilitating the assessment and taxation of real property in the territory within the limits of the District of Columbia lying outside of the city of Washington the following system of designating the several subdivisions, blocks, lots, and parcels of land is hereby prescribed, and each and every designation made or given in conformity with said system shall be deemed a sufficient description of the property to which it relates for all purposes of assessment and the collection of taxes and assessments of every kind. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 1.)

§ 47-405 [20: 675]. Designation of land to be numbered.

The Commissioners of the District of Columbia are hereby authorized and directed to cause to be given numbers to all of said blocks or squares, lots or parcels of land as said blocks, squares, lots, or parcels of land have been formed by the highway-extension plan, of record on February 23, 1905, in the office of surveyor of the District of Columbia, and subdivisions existing on February 23, 1905, and to place the numbers so given upon the said highway-extension plan: *Provided*, That in all cases where two or more blocks or parts of contiguous existing subdivisions are surrounded as a group by

existing streets or roads, or by proposed streets of the highway-extension plan, such group shall be numbered as a block or square upon the recorded plats of the highway-extension plan: *Provided further*, That where lots are numbered in duplicate in any block or square which includes parts of two or more existing subdivisions, new lot numbers shall be given said lots numbered in duplicate, and new lot numbers shall also be given to all parts of lots remaining after the extension of streets or alleys by dedication, condemnation, or purchase, whereby parts of lots have become public property: *Provided further*, That new lot numbers shall also be given to all parts of original and subdivided lots existing on February 23, 1905, on the records of the assessor and the surveyor of the District of Columbia. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 2.)

## NOTES TO DECISIONS

## SQUARE BOUNDARIES

Streets projected by the highway commission are designated as "square boundaries." *Hazard v. Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

## POWERS OF COMMISSIONERS

Commissioners could not open street running through corners of two squares and across proposed street. *Rudo'ph v. Warwick* (56 App. D. C. 128, 10 Fed. (2d) 993).

The commissioners were authorized and directed to number all the blocks or squares, lots or parcels of land which had been formed by the highway extension plan as shown by the records of the surveyor of the District of Columbia. *Hazard v. Blessing* (55 App. D. C. 114, 2 Fed. (2d) 916).

§ 47-406 [20: 676]. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

The Commissioners of the District of Columbia shall cause to be prepared a series of volumes of plats, on a scale of one hundred feet to the inch, embracing all the land in said District outside the city of Washington, these plats to show at all times the separate parcels of land created by subdivisions, sales, wills, condemnations, dedications, decrees of court, or otherwise, each with its distinctive number. Said books shall be kept in the office of the surveyor of said District, and shall be numbered according to the first and last page numbers of each volume, the pages being numbered continuously, and indefinitely rising in numbers as new books are opened to record changes in the outlines of parcels from any cause. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 3.)

§ 47-407 [20: 677]. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

For the purpose of keeping said books constantly current and up to date, the said commissioners shall cause an employee of the surveyor's office to make daily transcripts of all deeds of conveyance, wills, condemnations, decrees, and other instruments or proceedings by which boundaries are changed; for which purpose, such employee of the surveyor's office shall at all times during business hours have full and free access to all records of the recorder of deeds, register of wills, clerk of the District Court of the United States for the District of Columbia, marshal, and other officials; and the surveyor shall



furnish to the assessor a copy of such transcript, from which a duplicate set of taxation and assessment plat books shall be maintained by the said assessor: *Provided*, That the current series of taxation and assessment plat books in the surveyor's office shall be the standard book of reference for all purposes of assessment and taxation by all departments of the government of the District of Columbia. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 4.)

§ 47-408 [20: 678]. Designation given to land sufficient for tax sales purposes.

The designation given as hereinbefore prescribed in section 47-404 to each block or square, lot or parcel of land, respectively appearing on the records of the assessor of the District of Columbia at the time any assessment or tax is levied for which such property may become subject to sale, shall be a complete and official designation of said block or square, lot or parcel of land, for the purpose of the collection of taxes or assessments of any kind, and the designations so given shall be considered good and sufficient descriptions in any advertisements of such property for sale for delinquent taxes or assessments. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 5.)

§ 47-409 [20: 962]. Sale of property belonging to the United States—Report of sale.

It shall be the duty of the Director of the National Park Service, within ninety days after the sale of any lots or squares belonging to the United States in the city of Washington, to report the fact to the proper officers of the District, giving the date of sale, the number of the lot and square, and the name of the purchaser; and such lots or squares shall be liable to taxation by the District from the day of sale. (R. S., D. C., § 143; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

#### COMPILER'S NOTE

The functions of the Office of Public Buildings and Public Parks of the National Capital were transferred to the Office of National Parks, Buildings, and Reservations, and the first mentioned agency abolished by the President's Reorganization Plan No. 1, Executive Order 6166, § 2. The act of Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1 provided that thereafter the Office of National Parks, Buildings and Reservations should be known as the National Park Service.

### Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

#### Sec.

- 47-501. Assessment of taxes on real and personal property—Rate of taxation—Collection.
- 47-502. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.
- 47-503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

§ 47-501 [20: 681]. Assessment of taxes on real and personal property—Rate of taxation—Collection.

For the purpose of defraying such expenses of the District of Columbia as Congress may from time to time appropriate for, there hereby is levied for each and every fiscal year, a tax at such rate on the real and personal property subject to taxation in the District as will, when added to the other taxes and revenues of the District, produce money enough to

enable the District to pay promptly and in full all sums directed by Congress to be paid by the District, and for which appropriation has been duly made; and the Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed; and the Commissioners of the District shall, in accordance with existing law, cause all such taxes and revenues to be promptly collected and, when collected, to be daily deposited in the Treasury to the credit of the District for the purposes herein set out. (June 29, 1922, 42 Stat. 669, ch. 249.)

#### COMPILER'S NOTES

A minimum rate of 1.75 percent on real and tangible personal property for the fiscal year ending June 30, 1938, was set out by the act of Aug. 17, 1937, 50 Stat. 692, ch. 690, title VII, § 1. That section was amended by the act of May 16, 1938, 52 Stat. 369, ch. 223, title VI, § 7, which set the minimum rate for the year ending June 30, 1939. But the act of July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 3, amended the 1937 section as amended to read, "For the fiscal year ending June 30, 1940, the rate of taxation imposed on real and tangible personal property in the District of Columbia shall be 1.75 per centum of the assessed value of such property." It is believed that it was an inadvertence on the part of Congress in making the \$1.75 rate for the fiscal year of 1940 mandatory. In all probability it was intended to provide that the rate should not be less than \$1.75, as was done in the case of the two preceding years, but even though it was intended to make the \$1.75 rate mandatory for the fiscal year 1940, this would take all discretionary power from the Commission for that year only, and since, up to January 1, 1941, no rate has been fixed by Congress for any fiscal year subsequent to 1940, the rate would seem to be within the absolute discretion of the Commissioners.

The act from which this section was taken also levied a tax "on such intangible personal property as is subject to taxation in the District of Columbia, at the rate of five-tenths of one per centum on the full market value thereof" and contained a further provision, "the rate fixed herein on intangible personal property not to be made less but which may be increased by the Commissioners in their discretion to any rate not in excess of the rate imposed upon real estate." A rewording of these clauses, included in the comparable section of the 1929 Code, have been deleted because the Revenue Act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 1) provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with respect to any year subsequent to the fiscal year ending June 30, 1939."

#### CROSS REFERENCE

Time for payment, delinquency, § 47-1209.

§ 47-502 [20: 682]. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.

The treasury department shall accurately keep an account showing all receipts and disbursements relative to the revenues and expenditures of the District of Columbia, and shall also show the sources of the revenue, the purpose of expenditure, and the appropriation under which the expenditure is made; and any and all revenue derived from property not owned wholly or in part by the District of Columbia, as between the United States and the District of Columbia, shall be the property of the United States.



(June 29, 1922, 42 Stat. 669, ch. 249; May 16, 1938, 52 Stat. 375, ch. 223, title X, § 38.)

AMENDMENT

The act of May 16, 1938, 52 Stat. 375, ch. 223, title X, § 8, repealed that part of this section reading as follows: "and where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same." That act also repealed the following language of the 1922 act, cited to the text: "; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

§ 47-503 [20: 683]. Disposition of surplus funds—To be applied to succeeding year's expenditures.

If, for any fiscal year, the District of Columbia should raise and deposit in the treasury to its credit, more money derived from taxation, privileges, and other sources authorized in this chapter than may be necessary for the purposes therein, such excess shall be available the succeeding year, in the discretion of the Commissioners, either for the purpose of meeting the expense chargeable to the District of Columbia and/or for the further purpose of enabling the Commissioners to fix a lower rate of taxation for the year following the one in which said excess accrued than they might otherwise be able to do; and the agencies through which the District of Columbia collects its revenue derived from taxation shall also collect for the United States any revenues which by section 47-502 become the sole property of the United States, and said revenues shall be deposited in the Treasury of the United States as "miscellaneous receipts"; and the Commissioners of the District of Columbia shall not be restricted in submitting to the Bureau of the Budget their estimates of the needs of the District, but they shall, as near as may be bring them within the probable aggregate of the fixed proportionate appropriations to be paid by the United States and the District of Columbia. (June 29, 1922, 42 Stat. 669, ch. 249.)

COMPILER'S NOTE

This section formerly contained the words, "but the revenues from the property known as Center Market shall not be so collected," following the words "miscellaneous receipts," but this market is no longer in existence, see Act of June 6, 1930, 46 Stat. 523, ch. 412 and note to § 10-137. For this reason that part of the section above quoted has been deleted.

Chapter 6.—TAX ASSESSOR

Sec.

- 47-601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.
- 47-602. Assessor to furnish bonds.
- 47-603. Records to be kept by assessor—Duties of assessor.
- 47-604. Board of assistant assessors—Appointment—Qualifications—Clerk.

Sec.

- 47-605. Assistant assessors—Three members to assess real property and three members to assess personal property.
- 47-606. Assessor to have power to administer oaths and summon witnesses.

§ 47-601 [20: 691]. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

The assessor of the District of Columbia shall be charged with the duty of preparing the annual tax ledgers on a numerical system, which shall be finished or completed at such time as will allow preparation by him of tax bills for collection purposes. Upon the completion of the tax ledgers, said assessor shall prepare a statement showing the total amount of the assessment of both real and personal property, and the total amount of taxes to be collected under said assessment; which statement shall be receipted by the collector of taxes in triplicate, and said collector shall be held responsible under his bond for all such taxes, except such as he may not be able to collect after fully complying with the requirements of law. The original receipt of said assessment and taxes shall be forwarded by the assessor to the General Accounting Office, the duplicate to the auditor of the District of Columbia, and the triplicate shall be retained by the collector. (July 3, 1926, 44 Stat. 834, ch. 759, § 8; Mar. 31, 1892, 27 Stat. 13, ch. 30; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENTS

The 1921 act provided for the creation and duties of the General Accounting Office.  
The 1926 act added the first sentence.

CROSS REFERENCES

- Competent witness in condemnation proceedings, § 14-309.
- Duty to make list of those eligible for military service, § 39-103.
- Ex-officio member and chairman of Real Estate Commission, § 45-1403.

§ 47-602 [20: 692]. Assessor to furnish bonds.

The assessor of the District of Columbia shall give bond to the District of Columbia for the faithful and efficient performance of all the duties of his office in the penal sum of ten thousand dollars, with sureties to be approved by the commissioners of said District. (July 7, 1898, 30 Stat. 666, ch. 571.)

§ 47-603 [20: 748]. Records to be kept by assessor—Duties of assessor.

All records and accounts in any way relating or pertaining to the bookkeeping, accounting, and collection of taxes and assessments which, prior to June 25, 1938, were prepared by the assessor of the District of Columbia and kept in the office of the collector of taxes of the District of Columbia shall be transferred to and kept in the office of the said assessor. The said assessor shall be charged with the duties heretofore required of the collector of taxes in relation to the preparation and issuance of tax bills and bills for special taxes and assessments, the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold or which may hereafter be sold for the nonpayment of any general or special taxes or assessments, the furnishing of certi-



fied statements over his hand and official seal of all taxes and assessments general and special that may be due at the time of making the said certificate, and the preparation of the lists of taxes on real property in said District subject to taxation on which taxes are levied and in arrears on the 1st day of July in each year. On or before September 1 of each year the assessor shall prepare and retain in his office tax accounts in such form as shall be prescribed by the Commissioners of the District showing the assessed owners, amount, description, and value of real property listed for taxation in the District of Columbia, and on or before April 1 of each year the assessor shall prepare and retain in his office personal tax accounts in such form as may be prescribed by the Commissioners of the District showing the names and addresses of assessed owners, and the location and value of the property assessed. (June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

#### COMPILER'S NOTE

For the duties referred to in the second sentence, see § 47-1010.

#### § 47-604 [20: 693]. Board of assistant assessors—Appointment—Qualifications—Clerk.

The commissioners of the District of Columbia shall appoint six discreet persons, who shall have been bona fide residents of the District of Columbia for the period of at least five years, and conversant with real estate values therein, as a permanent board of assistant assessors. Each person so appointed on said board shall, within ten days after receiving notice thereof, take and subscribe an oath to diligently, faithfully, and impartially perform all and singular the duties imposed upon him by law. If any such appointee shall fail to qualify as aforesaid within the time prescribed, or shall fail to enter upon the discharge of his duties within fifteen days after such qualification, the appointment shall be void, and the commissioners shall forthwith appoint another suitable person, who shall qualify as above provided. And said commissioners are hereby authorized and directed to appoint a clerk for said board of assistant assessors; and said clerk shall also be the clerk for the board of equalization and review hereinafter provided for. (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 4, 1923, 42 Stat. 1488, ch. 265; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

#### AMENDMENTS

The 1902 amendment changed the number of persons from three to five; struck out following the words "assistant assessors", the first time they appear. The following words, "shall hold office for a term of four years, unless sooner removed by said Commissioners for cause satisfactory to them"; and inserted the following words, "the assessor of the District of Columbia and the members of the permanent board of assistant assessors shall not be removed except for inefficiency, neglect of duty, or malfeasance of office," which were repealed by the 1917 act. That part of the section as it appeared in the 1894 act providing for particular revision and equalization returns to be made before the first Monday in January 1895 has now been omitted as obsolete.

The 1926 amendment raised the number of members from five to six.

The law as originally enacted provided for salary of \$3,000. The salary paid is now governed by the Classification Act of 1923 (42 Stat. 1488), U. S. C., title 5, § 673.

#### § 47-605 [20: 694]. Assistant assessors—Three members to assess real property and three members to assess personal property.

The assessor of the District of Columbia shall designate three of the members of said Board of Assistant Assessors for the assessment of real estate, and the three other members of said board to assess personal property, in accordance with law; all members of said board, together with the assessor of the District of Columbia, as chairman, shall constitute the Board of Equalization and Review of real-estate assessments, and also the Board of Personal Tax Appeals: *Provided*, That the assessor of the District of Columbia shall act as chairman, ex officio, of the several boards aforesaid. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

#### AMENDMENT

The 1926 amendment provided that three members should serve on the board to assess personal property. See amendment note to preceding section (§ 47-604.)

#### NOTES TO DECISIONS

##### TESTIMONY OF ASSESSOR

In appraising property for tax assessment, a district assessor may not testify as expert witness in condemnation proceedings. *Johnson v. Retchelderfer* (60 App. D. C. 186, 50 Fed. (2d) 336).

However, see § 14-309.

#### § 47-606 [20: 695]. Assessor to have power to administer oaths and summon witnesses.

The assessor of the District of Columbia and each member of said Board of Assistant Assessors in the discharge of any of the duties devolved upon him or them, or the Board of Equalization and Review, may administer all necessary oaths or affirmations. The assessor of the District of Columbia, or in his absence the temporary chairman of said board, shall have power to summon the attendance of any person before said board to be examined under oath touching such matters and things as the Board of Assistant Assessors or the said Board of Equalization and Review may deem advisable in the discharge of their duties; and any member of the Metropolitan police force of the District of Columbia may serve subpoenas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of the contingent fund of the commissioners, as are allowed in civil actions before the District Court of the United States for the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 13.)

#### Chapter 7.—ASSESSMENT OF REAL PROPERTY

##### Sec.

- 47-701. Assessments to be made in the name of the owner.
- 47-702. Assessments to be made annually.
- 47-703. Assessments to be by lot and square.
- 47-704. Commissioners to supply Board of Assistant Assessors with plats.
- 47-705. Assistant assessor's valuation to be made separately for improvements and each tract or lot.
- 47-406. Board of Assistant Assessors to make annual tabulated report of property assessed.
- 47-707. Penalties.



Sec.

- 47-708. Board of equalization and review—To meet annually—Notice of meetings.
- 47-709. Valuation of real property to be complete on the first Monday of June annually.
- 47-710. Real property and improvements becoming subject to taxation to be listed annually.
- 47-711. New buildings under roof to be included in list.
- 47-712. Assessment of omitted property—Voided assessments, reassessment of property.
- 47-713. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.
- 47-714. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.
- 47-715. Redistribution of assessment on application by owner of unsubdivided tract.
- 47-716. Application for redistribution or reassessment—Notice—Validity.
- 47-717. Reassessment of real estate by board of assistant assessors.
- 47-718. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company property—Taxation.
- 47-719. Baltimore and Ohio Railroad Company—Terminals—Taxation.
- 47-720. Baltimore and Potomac, bridges and tunnels assessed for taxation.
- 47-721. Reassessment of taxes declared void by court.
- 47-722. Valuation of United States property in the District of Columbia.
- 47-723. Valuation of United States property in the District of Columbia under regulations of Secretary of Interior.

§ 47-701 [20: 696]. Assessments to be made in the name of the owner.

All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed "owner unknown." (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 1.)

## CROSS REFERENCES

Assessment of a tax against premises used for purposes of prostitution, § 22-2717.

Assessment of land reverting from abandoned highways, § 7-124.

Assessment of lands reverting to private owners from public highways closed under Street Readjustment Act, § 7-401.

Board for assessment of real estate, § 47-605.

## CITED

*Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

## NOTES TO DECISIONS

## PROPERTY NOT TO BE ASSESSED

Poles, conduits, wires, and lamps are not to be assessed under the real estate tax law. *Rudolph v. Potomac Elec. Power Co.* (58 App. D. C. 54, 24 Fed. (2d) 882, 57 A. L. R. 865).

## RECORD OWNER

Taxes must be assessed in the name of the record owner of the property. *Tepper v. Fraser* (63 App. D. C. 174, 70 Fed. (2d) 778).

§ 47-702 [20: 697]. Assessments to be made annually.

Assessments of real estate in the District of Columbia for purposes of taxation shall be made an-

nually in the same manner and subject to the same limitations as heretofore provided by law for making biennial assessments of real estate in said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 3; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

## COMPILER'S NOTE

The words "as heretofore provided by law" refer to this chapter, the basic law of which is the 1894 act, cited to the text. (See amendment note.)

## AMENDMENTS

The 1894 act provided "That real property shall be assessed and valued in the year 1896, and every third year thereafter, as herein provided."

The 1916 act provided for biennial assessments "in the same manner as is now required by law for triennial assessments."

## CROSS REFERENCE

Time for payment, delinquency, § 47-1209.

§ 47-703 [20: 697a]. Assessments to be by lot and square.

Real estate in the city of Washington, except such as may be exempt by law from taxation, shall be assessed according to the number of the squares and lots thereof, or parts of lots, and upon the number of the square or superficial feet in each square or lot, or parts of a lot, and in the county the agricultural lands shall be assessed by the acre, and suburban lots by the square foot, as in the city of Washington. (Mar. 3, 1883, 22 Stat. 569, ch. 137, § 5; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

## AMENDMENT

The 1895 act incorporated Georgetown into the city of Washington and directed "that the squares in Georgetown" be "renumbered, so that no square shall hereafter bear a like number to any square in the city of Washington."

## NOTES TO DECISIONS

## FRONT-FOOT RULE

Assessment under front-foot rule held invalid. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525); *Dougherty v. American Secur. & Trust Co.* (59 App. D. C. 301, 40 Fed. (2d) 813, cert. den. 282 U. S. 854, 75 L. Ed. 757, 51 Sup. Ct. 31); *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abutting properties. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

In applying the front-foot rule under this act, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

§ 47-704 [20: 698]. Commissioners to supply Board of Assistant Assessors with plats.

The commissioners shall furnish each member of said Board of Assistant Assessors with the necessary maps and field books, which shall contain an accu-



rate list of each tract, together with a pertinent description of the real property situate in the District of Columbia, and, as far as may be known, the owner thereof; and also such blanks, forms, books, surveys, and plats as may be necessary for a systematic statement of the property to be assessed, and shall also furnish the said Board of Assistant Assessors with the necessary conveyance to view said property for assessment. Upon the completion of the assessment the said Board of Assistant Assessors shall deposit with the assessor of the District of Columbia all maps, field books, surveys, and plats, and all notes and memoranda thereof, and same shall be open to inspection by any taxpayer of said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 4.)

## CROSS REFERENCE

Appointment of Board, § 47-605.

§ 47-705 [20: 699]. Assistant assessor's valuation to be made separately for improvements and each tract or lot.

Said Board of Assistant Assessors shall, from actual view and from the best sources of information in its reach, determine the value of each separate tract or lot of real property in the District of Columbia in lawful money, and shall separately estimate the value of all improvements on any tract or lot, and shall note the same in the proper field book, which shall be carried out as part of the value of such tract or lot, and shall also return the dimensions of each tract or lot, and said assistant assessors shall also perform such other official duties as may be required of them by the Commissioners of the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 6.)

§ 47-706 [20: 700]. Board of Assistant Assessors to make annual tabulated report of property assessed.

Said Board of Assistant Assessors shall annually on or before the 1st Monday of January make out and deliver to the assessor of the District of Columbia a return in tabular form, contained in a book to be furnished by the commissioners, of the amount, description, and value of the real property subject to be listed for taxation in the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 7; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

## AMENDMENTS

The 1894 act provided "that said board of assistant assessors shall, on or before the first Monday in January, eighteen hundred and ninety-six, and every third year thereafter make out etc."

The 1926 act provided that assessments be made annually (see § 47-702 and notes thereto).

§ 47-707 [20: 701]. Penalties.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of sections 47-604 to 47-712 shall, on conviction thereof, be liable to removal from office and to a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, in the discretion of the court, for each offense. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 8.)

§ 47-708 [20: 702]. Board of Equalization and Review—To meet annually—Notice of meetings.

The assessor and deputy assessor of the District and the board of all of the assistant assessors, with the assessor as chairman, shall compose a Board of Equalization and Review, and as such Board of Equalization and Review they shall convene in a room to be provided for them by the Commissioners, on the first Monday of January of each year, and shall remain in session until the first Monday in April of each year, after which date no complaint as to valuation as herein provided shall be received or considered by such Board of Equalization and Review. Public notice of the time and place of such session shall be given by publication for two successive days in two daily newspapers in the District not more than two weeks or less than ten days before the beginning of said session. It shall be the duty of said Board of Equalization and Review to fairly and impartially equalize the value of real property made by the board of assistant assessors as the basis for assessment. Any five of said Board of Equalization and Review shall constitute a quorum for business, and, in the absence of the assessor, a temporary chairman may be selected. They shall immediately proceed to equalize the valuations made by the board of assistant assessors so that each lot and tract and improvements thereon shall be entered upon the tax list at their value in money; and for this purpose they shall hear such complaints as may be made in respect of said assessments, and in determining them they may raise the valuation of such tracts or lots as in their opinion may have been returned below their value and reduce the valuation of such as they may believe to have been returned above their value to such sum as in their opinion may be the value thereof. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 9; July 3, 1926, 44 Stat. 834, ch. 759, § 10; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

## AMENDMENTS

The 1894 act contained the words "eighteen hundred and ninety-six, and every third year thereafter," which have been replaced by the words "each year" at the end of the first sentence in view of the 1926 act (see § 47-702 and notes thereto).

The 1938 act added this section to the 1937 law and provided for the termination of sessions, fixed the last day for receiving complaints, and changed the quorum requirement from three to five members.

The 1939 amendment added the words "and deputy assessor" and "all of the" in the first phrase.

§ 47-709 [20: 703]. Valuation of real property to be complete on the first Monday of June annually.

The valuation of the real property made and equalized as aforesaid shall be completed not later than the first Monday of May annually. The valuation of said real property made and equalized as aforesaid shall be approved by the Commissioners not later than July 1 annually, and when approved by the Commissioners shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law, except as hereinafter provided. Any person aggrieved by an assessment, equalization, or valuation made, may,



within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 10; July 3, 1926, 44 Stat. 834, ch. 759, § 10; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

#### AMENDMENTS

The 1894 act contained the words "eighteen hundred and ninety-six, and every third year thereafter" which have been replaced by the word "annually" following the word "June" in view of the 1926 act (see § 47-702 and notes thereto).

The 1938 act added this section to the 1937 act and changed the last day for equalization from the first Monday in June to the first Monday in May, provided for the last day for valuation, set July 1 as the final day for approval by the Commissioners, and added the method of appeal.

The 1939 amendment deleted the words "pursuant to this paragraph" following the word "made" the first time it appears in the last sentence before the proviso, changed the date in the same sentence from "August 1" to "April 1," and added the proviso.

§ 47-710 [20: 704]. Real property and improvements becoming subject to taxation to be listed annually.

Annually, on or prior to July 1 of each year, the board of assistant assessors shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which shall not have been theretofore assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage: *Provided*, That the Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments between September 1 and September 30 and determine the same not later than October 15 of the same year. Any person aggrieved by any assessment or valuation made in pursuance of this section may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 11; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

#### AMENDMENTS

The 1938 act added this section to the 1937 act and changed the first proviso from "That the Board of Equalization and Review shall hear such complaints as may be made in respect to said assessments and determine the same between the first Monday of July of the same year" to read as it now does except that the dates were "between July 1 and July 15" and "not later than August 1" and "after August 1," and added the entire appeal method.

The 1939 amendment changed the dates in the first proviso from "July 1 and July 15" to "September 1 and September 30" and from "August 1" to "October 15" both times it appeared, and added the second proviso.

§ 47-711 [20: 705]. New buildings under roof to be included in list.

In addition to the annual assessment of all real estate made on or prior to July 1 of each year there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the second half of the then current year payable in the month of March. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause prior to January 1 of each year the said board of assistant assessors shall reduce the assessment on said property to the extent of said damage for the second half of the then current year payable in the month of March. The Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments for the second half of said year between March 1 and March 31 and determine said complaints not later than April 15 of the same year. Any person aggrieved by any assessment made in pursuance of this section may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided. (July 3, 1926, 44 Stat. 833, ch. 759, § 3; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

#### AMENDMENTS

The 1938 act added this section to the 1937 act and incorporated the second sentence in its entirety, changed the wording in the third sentence from "in respect of said assessments for the second half of said year and determine said complaints between the first and third Mondays of January of the same year" to "in respect of said assessments for the second half of said year between January 1 and January 15 and determine said complaints not later than February 1 of the same year" and added the appeal method with the date as "February 1."

The 1939 amendment changed the dates from "January 1 and January 15" to "March 1 and March 31," and from "February 1" to "April 15" both times it appeared, and added the proviso.

§ 47-712 [20: 706]. Assessment of omitted property—  
Voided assessments, reassessment of property.

If said Board of Assistant Assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment was void, it shall be their duty at once to reassess such property for each and every year for which it has



escaped assessment and taxation and report the same, through the assessor, to the collector of taxes, who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided*, That no property which has escaped taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation.

If the board of assistant assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment was void, it shall be their duty at once to reassess this property for each and every year for which it has escaped assessment and taxation, and report the same, through the assessor, to the collector of taxes who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided*, That no property which has escaped assessment and taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation. In addition to the duties of the assessor hereinbefore provided, it shall be the duty of the assessor upon reassessment as herein provided to notify the taxpayer by writing of the fact of such reassessment. Any person aggrieved by any reassessment made in pursuance of this section may, within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47-2403, 47-2404. (Aug. 14, 1894, 28 Stat. 284, ch. 287, § 12; Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8.)

#### AMENDMENTS

The 1938 act added this section to the 1937 act and deleted the word "said" after the word "if" at the beginning of the section, added the words "assessment and" after the word "escaped" in the proviso, and added the last two sentences to the proviso.

#### NOTES TO DECISIONS

##### No ASSESSMENT MADE

In the absence of statutory provision for reassessment for prior years, none can validly be made. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

##### THREE-YEAR PERIOD

No property which has escaped taxation shall be liable for a period of more than three years prior to such assessment. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

##### CROSS REFERENCE

Manner of serving notice, § 47-2411.

§ 47-713 [20: 707]. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.

All real estate in the District of Columbia subject to taxation, including improvements thereon, shall be listed and assessed at not less than the full and true value thereof in lawful money.

Whenever a subdivision of any lot or parcel of land in the District of Columbia, or any portion of any such lot or parcel is made during the months of July, August, September, October, November, or December, the general tax due and payable upon such lot or

parcel of land for prior years and for the first half of the then current fiscal year shall then be paid, and all water main and sewer assessments and special assessments of any kind thereon shall then become due and payable, and be paid before such subdivision shall be admitted to record in the office of the surveyor of the District of Columbia; and the general tax thereon for the last half of the then current fiscal year shall be due and payable in the following May. (July 1, 1902, 32 Stat. 616, ch. 1352, § 5; Mar. 1, 1921, 41 Stat. 1195, ch. 95, § 1; June 29, 1922, 42 Stat. 669, ch. 249; July 3, 1926, 44 Stat. 833, ch. 759, § 4.)

#### AMENDMENTS

The 1921 amendment added the second paragraph.

The 1922 and the 1926 acts provided for assessment of real property at not less than the full market value, whereas the 1902 act provided for assessment at not less than two-thirds of the true market value.

#### NOTES TO DECISIONS

##### DUTY OF TAXPAYER

Local statute imposes on the taxpayer the duty truthfully to fill out the proper blanks in the schedule furnished by the assessor. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47-714 [20: 708]. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.

Whenever such subdivision is made during the months of January, February, March, April, May, or June, the total general tax assessed against the original lot or parcel of land for prior years and for the then current fiscal year, and all water main and sewer assessments and special assessments of any kind thereon, shall become due and payable and be paid before such subdivision is admitted to record in the office of the surveyor of the District of Columbia. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 2.)

§ 47-715 [20: 709]. Redistribution of assessment on application by owner of unsubdivided tract.

Whenever application is made in writing to the assessor of the District of Columbia by the owner of any tract of land in said District not subdivided into lots and of record as a subdivision in the office of the surveyor of said District, for the redistribution of any general or special taxes or assessments then levied or due thereon, or whenever such application is made by the owner of any parcel of such tract for such redistribution, any such general or special taxes or assessments levied or due against the entire tract of which such parcel is a part shall be redistributed so that the owner of any such parcel may pay the proportion of such entire taxes or assessments equitably chargeable thereon. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 3.)

§ 47-716 [20: 710]. Application for redistribution or reassessment—Notice—Validity.

Whenever application is made according to law for the reassessment or redistribution of taxes by reason of the subdivision of any tract of land in the District, the board of assistant assessors charged with the assessment of real estate in the District is hereby authorized and directed to reassess and redistribute any general or special assessment or tax levied or due and unpaid in accordance with provi-



sions of laws for the assessment and equalizations of valuations of real estate in the District for taxation. The assessor shall promptly notify the owners of record of the land, the taxes of which shall be reassessed or redistributed. Notices in such case shall be served upon each lot or parcel owner if he or she be a resident of the District and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said Commissioners. Any person aggrieved by such reassessment or redistribution, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47-2403, 47-2404.

Any reassessment or redistribution made under sections 47-713 to 47-716 shall be as valid and effectual upon the various parts of the property, in the same manner and to the same extent as if the tax or assessment so reassessed or redistributed had been laid originally thereon under the various laws appertaining thereto. No payment or failure to pay a tax or assessment upon any such part shall change or affect the liability of the other parts of such property for any tax or assessment so reassessed or redistributed. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 4; Aug. 17, 1937, 50 Stat. 673, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8.)

#### AMENDMENTS

The 1938 act added the first paragraph of this section to the 1937 act while the remainder of the section is as it was in the 1921 act.

#### CROSS REFERENCE

Manner of serving notice, § 47-2411.

§ 47-717 [20:711]. Reassessment of real estate by Board of Assistant Assessors.

The Board of Assistant Assessors charged with the assessment of real estate in the District of Columbia is hereby authorized and directed to reassess or redistribute any such general or special assessment or tax levied or due and unpaid in accordance with the provisions of laws for the assessment and equalizations of the valuations of real estate in the District of Columbia for taxation, after notice to owners of record of the land to be assessed, with right of appeal within ten days to the Board of Equalization and Review, as prescribed in section 47-708 and the assessor of said District is hereby authorized and directed to promptly reassess or redistribute any general or special assessment of any kind levied or due and unpaid, as hereinbefore provided. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 5.)

§ 47-718 [20:736]. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company's property—Taxation.

The property owned or occupied by the Washington Terminal Company, or by the Philadelphia, Baltimore and Washington Railroad Company, or by the Baltimore and Ohio Railroad Company under authority of this Act, or otherwise, together with the improvements that may be put thereon, shall be subject to taxation in the District of Columbia in the same manner and to the same extent as other property in the District, and all tracks and sidings shall be taxed as real estate: *Provided*, That no assessment, valuation, or tax shall be made, laid, or levied on the stations, terminals, and lines of railroad located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said stations, terminals, and lines of railroad were located, constructed, and maintained without the use of bridges, tunnels, viaducts, retaining walls, or other structures necessary or properly employed to elevate or to depress the same as required by this Act; it being the true intent and meaning hereof that the lines of railroad and terminals hereby authorized shall be assessed and valued for the purpose of taxation and taxed on the same basis as if the same were not constructed and maintained by means of such bridges, tunnels, viaducts, retaining walls, and other structures: *Provided*, That such portions of the terminal structure or viaduct as may be constructed and used for storage or like commercial purpose shall be subject to taxation in the same manner as other property in the District of Columbia. (Feb. 28, 1903, 32 Stat. 914, ch. 856, § 6.)

#### COMPILER'S NOTE

The act referred to as "This Act" is the act cited to the text, the act of February 28, 1903, 32 Stat. 909, ch. 856 (§§ 7-1213, 7-1214, and this section). This act supplements the act referred to in the note to § 47-719 and provides for a union railroad station. The sections of the act which have been retained in the code are those providing continuing duties and privileges for the companies concerned, while the omitted sections are deemed executed.

§ 47-719 [20:737]. Baltimore and Ohio Railroad Company—Terminals—Taxation.

The property occupied by the Baltimore and Ohio Railroad Company, or by the Washington Terminal Company, under authority of this Act, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided*, That no assessment, valuation, or tax shall be made or levied on the railroad or terminals located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said railroad and terminals were so located, constructed, and maintained without the use of bridges, viaducts, retaining walls, and other structures necessary or properly employed to elevate the same as required by this Act, it being the true intent and meaning hereof that the railroad and terminals hereby authorized shall be assessed and valued for purposes of taxation and taxed on the same basis as if the



same were not constructed and maintained by means of such bridges, viaducts, retaining walls, and other structures. (Feb. 12, 1901, 31 Stat. 779, ch. 354, § 9.)

#### COMPILER'S NOTE

The act referred to as "this act" is the act cited to the text, act of February 12, 1901, 31 Stat. 774, ch. 354 (§ 7-1212 and this section). This act provides for the formation of a terminal company, the building of a new railroad station and joint trackage and viaducts thereto, and for eliminating certain grade crossings. The sections of the act which have been retained in the code are those providing continuing duties and privileges to the companies concerned, while the omitted sections are deemed executed.

§ 47-720 [20: 733]. Baltimore and Potomac, bridges and tunnels assessed for taxation.

The property occupied by the Baltimore and Potomac Railroad Company under authority of this section, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided*, That no assessment, valuation, or tax shall be made, laid, or levied on the Baltimore and Potomac Railroad Company on account of any bridges, tunnels, elevated tracks, or subway which shall be located, constructed, or maintained under the authority of this Act, and forming part of said railroad, in excess of that which would or could be lawfully made, laid, or levied if said railroad was wholly located and constructed on the surface of the ground; it being the true intent and meaning hereof that any such bridges, tunnels, elevated tracks, or subway forming a part of said railroad shall be assessed and valued for purposes of taxation and taxed on the same basis as any other equal portion of railroad situated within the said District of Columbia not constructed on, in, through, or upon any such bridges, tunnels, elevated tracks, or subway. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 14.)

#### COMPILER'S NOTE

The act referred to as "this act" is the act cited to the text, act of February 12, 1901, 31 Stat. 767, ch. 353 (§§ 7-507, 7-508, 7-1211, and 47-720). The act provides that the railroad company is to relocate part of its tracks, eliminate certain grade crossings, and to depress and elevate trackage. The sections of the act which have been retained in the code are those providing continuing duties and privileges, while the omitted sections are deemed executed.

§ 47-721 [20: 739]. Reassessment of taxes declared void by court.

The Commissioners of the District of Columbia are hereby authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may be quashed, set aside, or declared void by the District Court of said District, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied, to reassess the lot or parcel of ground in respect of such general taxes or the im-

provement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided*, That in cases where such taxes or assessments shall be quashed or declared void by said court, for the reasons hereinbefore stated, the reassessment herein provided for shall be made within ninety days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount theretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this section. (Apr. 24, 1896, 29 Stat. 98, ch. 123.)

#### CROSS REFERENCE

Other similar provisions, §§ 7-632, 47-1106.

§ 47-722 [20: 963]. Valuation of United States property in the District of Columbia.

There shall be a valuation taken of all real estate belonging to the United States in the District, except the public buildings, and the grounds which have been dedicated to the public use as parks and squares, at least once in five years, and return thereof shall be made by the commissioners to the President of the Senate and Speaker of the House of Representatives on the first day of the session of Congress held after such valuation shall be taken. (R. S., D. C., § 138; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

#### AMENDMENT

The 1874 act created and vested power in the Commissioners.

§ 47-723 [20: 964]. Valuation of United States property in the District of Columbia under regulations of Secretary of the Interior.

All valuations of property belonging to the United States shall be made by such persons as the Secretary of the Interior shall appoint, and under such regulations as he shall prescribe. (R. S., D. C., § 139.)

#### CROSS REFERENCE

Rules and regulations, § 47-2502 and notes.

### Chapter 8.—EXEMPTIONS FROM TAXATION

- Sec.  
 47-801. Corcoran Art Building—Libraries—Churches—Soldiers' Home—Reformatories—Public charities—Cemeteries.  
 47-802. Property used for educational purpose.  
 47-803. Property of United States, District of Columbia, and foreign legations.  
 47-804. Orphan asylums.  
 47-805. Louise Home.  
 47-806. Sheridan tapestries.  
 47-807. Chesapeake and Ohio Canal.  
 47-808. Oak Hill Cemetery.  
 47-809. Corcoran Gallery of Art—Real property and works of art.  
 47-810. Corcoran Gallery of Art—Endowment fund.  
 47-811. Howard University.  
 47-812. Luther Statue Association.  
 47-813. Saint Mark's Protestant Episcopal Church.  
 47-814. "Young Women's Christian Home."  
 47-815. Young Women's Christian Association.  
 47-816. Young Women's Christian Association—Remission of accrued taxes.  
 47-817. Young Men's Christian Association.  
 47-818. Frederick Douglass Memorial and Historical Association.  
 47-819. Edes Home.  
 47-820. General Education Board.



Sec.

- 47-821. Daughters of American Revolution—Lots 8, 9, and 10, square 173.  
 47-822. Daughters of the American Revolution—Square 173.  
 47-823. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.  
 47-824. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27, and 28.  
 47-825. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.  
 47-826. National Society United States Daughters of 1812—Lot 811.  
 47-827. National Society of the Sons of the American Revolution.  
 47-828. The American Legion—Lots 32 and 33.  
 47-829. National Education Association.  
 47-830. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.

§ 47-801 [20: 712]. Corcoran Art Building—Libraries—Churches—Soldiers' Home—Reformatories—Public charities—Cemeteries.

The property exempt from taxation shall be the following and no other (except as otherwise specifically provided in this code), namely: First, the Corcoran Art Building, free public library buildings, churches, the Soldiers' Home, and grounds actually occupied by such buildings; secondly, houses for the reformation of offenders, almshouses, buildings belonging to institutions of purely public charity, conducted without charge to inmates, profit, or income; cemeteries dedicated and used solely for burial purposes and without private income or profit; but if any portion of any such building, house, grounds, or cemetery so in terms excepted is larger than is absolutely required and actually used for its legitimate purpose and none other, or is used to secure a rent or income, or for any business purpose, such portion of the same, or a sum equal in value to such portion, shall be taxed against the owner of said building or grounds; thirdly, such property as is exempt from taxation by laws of the United States. So, also, shall every rectory, parsonage, glebe house, and pastoral residence which is occupied as a residence by the pastor, rector, minister, or rabbi be so exempt from taxation in the District of Columbia: *Provided*, That such rectory, parsonage, glebe house, or pastoral residence be owned by the church or congregation for which the said pastor, rector, minister, or rabbi officiates: *And provided further*, That not more than one such rectory, parsonage, glebe house, or pastoral residence shall be so exempt for any one congregation. (Mar. 3, 1877, 19 Stat. 399, 402, ch. 117, §§ 8 and 18; Aug. 15, 1916, 39 Stat. 514, ch. 342.)

## AMENDMENT

The 1916 amendment added the last sentence.

## CROSS REFERENCES

- Exemption of burial grounds, § 27-111.  
 Exemption of credit unions from taxation, § 26-516.  
 Exemptions from income taxes, § 47-1502.  
 Exemptions from personal-property tax, § 47-1208.

## NOTES TO DECISIONS

## MANUFACTURING PROPERTY

Act exempting manufacturing property from taxation does not create a contract in the sense that it cannot be repealed. *Welch v. Cook* (97 U. S. 541, 24 L. Ed. 1112).

§ 47-802 [20: 713]. Property used for educational purpose.

Property used for educational purposes that is not used for private gain shall be exempt from taxation, and all other property used for educational purposes shall be assessed and taxed as other property is assessed and taxed. (July 1, 1902, 32 Stat. 616, ch. 1352, § 5.)

## NOTES TO DECISIONS

## EDUCATIONAL PURPOSES INCIDENTAL

Where education phase of corporation was at most incidental and collateral to the social, recreative, promotional, and propaganda phases which constituted its major reasons for existence, it was not exempt from tax under this section. *Hazen v. National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

## MT. VERNON SEMINARY

Mt. Vernon Seminary in the District of Columbia was exempt from taxation as a corporation whose property was held solely for educational purposes, no income inuring to any individual, and not for private gain, even though its receipts had exceeded its expenditures, resulting in a net profit to the institution. *District of Columbia v. Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

## STANDARDS

If school measures up to standards of curriculum and pedagogy set by the Government it comes within the reason for the subsidy which is implicit in a tax exemption. *District of Columbia v. Mt. Vernon Seminary* (69 App. D. C. 251, 100 Fed. (2d) 116).

§ 47-803 [20: 714]. Property of United States, District of Columbia, and foreign legations.

No property except that of the United States or the District of Columbia and property owned by foreign governments for legation purposes shall be exempt from assessments for improvements. (Mar. 3, 1903, 32 Stat. 961, ch. 992.)

## CROSS REFERENCE

Special assessments for improvements around the capitol, § 47-1107.

§ 47-804 [20: 715]. Orphan asylums.

Orphan asylums and the grounds actually occupied thereby shall be exempt from taxation while so occupied: *Provided*, That all other real estate belonging to such institutions shall still be held for assessment and taxation. (Mar. 3, 1881, 21 Stat. 513, ch. 160, § 2.)

§ 47-805 [20: 716]. Louise Home.

The buildings and grounds of the Louise Home, and all property held by the trustees thereof for the purposes of the trust contained in a certain deed from William W. Corcoran dated November 21, 1869, and recorded in liber 630 at folio 458 of the land records of the District of Columbia, on the square numbered one hundred and ninety-six shall be free from all taxes and assessment by the municipal authorities, or by the United States, so long as the same shall be held and used for the purposes of the said trust. (Mar. 3, 1875, 18 Stat. 508, ch. 168, § 2.)

§ 47-806 [20: 717]. Sheridan tapestries.

No personal taxes be levied against certain tapestries, which were presented to the late Lieutenant-General Philip H. Sheridan for gallant and meritorious services, and which were on exhibition in the Na-



tional Museum on April 27, 1904, so long as they are exhibited in said museum. (Apr. 27, 1904, 33 Stat. 364, ch. 1628.)

§ 47-807 [20: 718]. Chesapeake and Ohio Canal.

For and in consideration of the expenses the said stockholders will be at, not only in cutting the Chesapeake and Ohio canal, erecting locks and dams, providing aqueducts, feeders, and other works, and in improving and keeping the same in repair, the said canal and all other works aforesaid, or required to improve the navigation thereof, at any time hereafter, with all their profits, subject to the limitations herein provided, and to none other, shall be, and the same are hereby, vested in the said stockholders, their heirs and assigns, forever, as tenants in common, in proportion to their respective shares, and be forever exempt from the payment of any tax, imposition, or assessment whatsoever. (General Assembly of Virginia, Jan. 27, 1824; 4 Stat. 796, Appendix I, § 9; Mar. 3, 1825, 4 Stat. 101, ch. 52.)

AMENDMENT

The 1825 act confirms the act of the legislature of the State of Virginia entitled "An act incorporating the Chesapeake and Ohio Canal Company," and "An act of the State of Maryland, confirming the same." The 1825 act contains the words of this section.

NOTES TO DECISIONS

CONSTITUTIONAL LAW

The provision in the charter which requires the jury to do what they would be competent to do without such provision, and which, in order to ascertain a compensation which should be just toward the public as well as toward the individual, they ought to do, cannot be considered repugnant to the Constitution; citing and quoting *Chesapeake & Ohio Canal Co. v. Key*, 3 Cranch (7 U. S.) 599, 601. *Bauman v. Ross* (167 U. S. 548, 42 L. Ed. 270, 17 Sup. Ct. 966).

FORFEITURE FOR NONUSER

The question of forfeiture by nonuser could be established only by a direct proceeding on the part of the public authorities, and a decision to that effect in a proper tribunal, and cannot be made an issue for the first time in the trial of the question of private rights. *Mackall v. Chesapeake & Ohio Canal Co.* (94 U. S. 308, 24 L. Ed. 161).

GENERAL CREDITORS

A general creditor of the Chesapeake and Ohio Canal Company had notice of the statute granting said company its charter. *Macalester v. Maryland* (114 U. S. 598, 29 L. Ed. 233, 5 Sup. Ct. 1065).

RIPARIAN RIGHTS

The Chesapeake and Ohio Canal Company does not own or possess riparian rights along the line of its canal within the limits of the city of Washington. *Morris v. United States* (174 U. S. 196, 43 L. Ed. 946, 19 Sup. Ct. 649).

§ 47-808 [20: 719]. Oak Hill Cemetery—Property inalienable and exempt from taxation.

The property owned by "The Oak Hill Cemetery Company" shall be forever inalienable by the said corporation, and shall be exempted from all public assessments and taxes so long as the same shall remain dedicated to the purposes of a cemetery. (Mar. 3, 1849, 9 Stat. 775, ch. 128, § 10.)

§ 47-809 [20: 720]. Corcoran Gallery of Art—Real property and works of art.

The buildings described in a certain deed from William W. Corcoran to the trustees of the Corcoran

Gallery of Art, dated May 10th, 1869, and recorded May 18th, 1869, in liber D, No. 8, folio 294 et seq., one of the land records of Washington County, District of Columbia, and the grounds connected therewith, together with all of the works of art that may be contained therein, shall be free from all taxes and assessments by the municipal authorities, or by the United States, so long as the same shall be held and used for the purposes set forth in said deed. (May 24, 1870, 16 Stat. 139, ch. 111, § 4.)

§ 47-810 [20: 721]. Corcoran Gallery of Art—Endowment fund.

All property held as endowment fund by the trustees of the Corcoran Gallery of Art, in the city of Washington, District of Columbia, for the purpose of revenue to support said institution, shall be, and the same is hereby, declared exempt from all taxation and assessments by the municipal authorities or by the United States so long as the same shall be so held. (Jan. 26, 1887, 24 Stat. 364, ch. 43.)

COMPILER'S NOTE

The act contained the following proviso which has been omitted as obsolete: "Provided, That real estate purchased prior to January 26, 1887, by said trustees in the management of the endowment fund shall be exempt from taxation only while so held, and not to exceed five years from January 26, 1887."

§ 47-811 [20: 722]. Howard University.

The property, real and personal, of the Howard University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: *Provided*, That nothing in this section shall exempt any real estate of said university from assessment and liability for special improvements authorized by law: *Provided also*, That this section shall not include any real estate sold or contracted to be sold by said university to any other person than the United States, the title to which may be still in the said university. (June 16, 1882, 22 Stat. 105, ch. 222, § 3.)

§ 47-812 [20: 723]. Luther Statue Association.

The lands acquired and held by the Luther Statue Association, and the statue erected thereon, and all the improvements and appurtenances thereto, shall be entirely exempt from taxation, and shall not be chargeable or assessed for any purpose whatever: *Provided*, That this section may be modified, repealed or amended, whenever Congress may see fit to do so. (Mar. 3, 1885, 23 Stat. 350, ch. 334, § 4.)

§ 47-813 [20: 724]. Saint Mark's Protestant Episcopal Church.

A certain piece of land situated in the city of Washington, District of Columbia, known as lots nine and eleven, in square seven hundred and eighty-eight of the plan of that city, and occupied by the church known as Saint Mark's Protestant Episcopal Church, and all the buildings, grounds, and property appurtenant thereto and used in connection therewith in the District of Columbia, shall be exempt from any and all taxes or assessments, national, municipal, or county. (Feb. 23, 1887, 24 Stat. 411, ch. 214.)



## § 47-814 [20: 725]. "Young Woman's Christian Home."

The property, whether real or personal, owned by the "trustees of Young Woman's Christian Home" and used exclusively for the charitable purposes of said organization shall be exempt from taxation. (Feb. 23, 1887, 24 Stat. 413, ch. 217, § 2.)

## § 47-815 [20: 725a]. Young Women's Christian Association.

All property of the Young Women's Christian Association of the District of Columbia located in the District of Columbia and occupied and used by such association for its legitimate purposes shall be exempt from all national and municipal taxation so long as such property is so occupied and used. (June 16, 1938, 52 Stat. 709, ch. 461, § 1.)

## § 47-816 [20: 725b]. Young Women's Christian Association—Remission of accrued taxes.

The Young Women's Christian Association of the District of Columbia is hereby relieved from any accrued liability to the United States or the District of Columbia for taxes imposed upon any of the property of such association located in the District of Columbia for any tax period during which such property was occupied and used by such association for its legitimate purposes. (June 16, 1938, 52 Stat. 709, ch. 461, § 2.)

## § 47-817 [20: 726]. Young Men's Christian Association.

All property belonging to the Young Men's Christian Association of the District of Columbia, used and occupied by that association, shall, so long as the same is so owned and occupied, be exempt from taxation, national and municipal: *Provided*, That where ground of said association is larger than is reasonably required for its use, or is not actually used for the legitimate purposes of said association, or if said ground or buildings shall be used for private gain, such portion of said ground or buildings as shall not actually be used for the purposes of said association, or from which it derives a rent or income, such portion of the same, or a sum equal in value to such portion, shall be taxed against such association. (Aug. 6, 1894, 28 Stat. 999, ch. 230.)

## § 47-818 [20: 727]. Frederick Douglass Memorial and Historical Association.

When the Frederick Douglass Memorial and Historical Association shall have acquired title in fee simple to the whole or a part, as the case may be, of the property known as Cedar Hill, in the village of Anacostia, in the District of Columbia, and formerly occupied as the homestead of the late Frederick Douglass, said land and premises shall be, and hereby are declared to be exempt from all taxes and assessments for taxation so long as the same shall be used for the purposes of this incorporation. Congress reserves the right to amend or repeal this section. (June 6, 1900, 31 Stat. 663, ch. 806, §§ 7, 8.)

## COMPILER'S NOTE

The "purposes of this incorporation" are contained in the act cited to the text.

## § 47-819 [20: 728]. Edes Home.

The property held by The Edes Home actually and exclusively used and occupied for a home for

aged and indigent widows shall while and as long as so actually and exclusively used and occupied, be free from any tax, burden, or assessment, laid or to be laid by the United States or under any authority emanating therefrom. This section shall be and remain at all times subject to repeal, alteration, or amendment by the Congress of the United States. (May 1, 1906, 34 Stat. 162, 163, ch. 2075, §§ 2, 6.)

## § 47-820 [20: 729]. General Education Board.

All real property of the General Education Board within the District of Columbia which shall be used by the corporation for the educational or other purposes of the corporation as aforesaid, other than the purpose of producing income, and all personal property and funds of the corporation held, used, or invested for educational purposes as aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however*, That this exemption shall not apply to any property of the corporation which shall not be used for, or the income of which shall not be applied to, the educational purposes of the corporation: *And provided further*, That the corporation shall annually file with the Secretary of the Interior of the United States a report in writing, stating in detail the property, real and personal, held by the corporation, and the expenditure or other use or disposition of the same or the income thereof during the preceding year.

This charter shall be subject to alteration, amendment, or repeal at the pleasure of the Congress of the United States. (Jan. 12, 1903, 32 Stat. 769, ch. 91, §§ 6, 7.)

## COMPILER'S NOTE

The words "as aforesaid" refer to the preceding sections of the act cited to the text.

## § 47-821 [20: 730]. Daughters of American Revolution—Lots 8, 9, and 10, square 173.

The property situated in square numbered 173 in the city of Washington, District of Columbia, described as lots 8, 9, and 10, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt hereafter (May 21, 1924) from all taxes, so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property, and Acts amendatory thereof. (May 21, 1924, 43 Stat. 135, ch. 163.)

## § 47-822 [20: 731]. Daughters of the American Revolution—Square 173.

That the property situated in square numbered one hundred and seventy-three, in Washington City, District of Columbia, occupied on February 27, 1903 by the Daughters of the American Revolution is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property, and Acts amendatory thereof. (Feb. 27, 1903, 32 Stat. 907, ch. 852.)

## § 47-823 [20: 732]. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.

The property situated in square one hundred and seventy-three in the city of Washington, District of



Columbia, described as lots twelve, thirteen, fourteen, fifteen, and sixteen, inclusive, occupied by the Daughters of the American Revolution, is exempt from and after February 28, 1921, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property, and Act amendatory thereof. (Sept. 16, 1922, 42 Stat. 846, ch. 319.)

§ 47-824 [20: 733]. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27, and 28.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property, and acts amendatory thereof. (Aug. 15, 1916, 39 Stat. 514, ch. 342.)

§ 47-825 [20: 734]. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots four, five, six, seven, and eleven, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from and after February 23, 1916, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property, and Acts amendatory thereof. (Mar. 3, 1917, 39 Stat. 1009, ch. 160.)

§ 47-826 [20: 734a]. National Society United States Daughters of 1812—Lot 811.

The property situated in square numbered 210 in the city of Washington, District of Columbia, described as lot 811, occupied and used by the National Society United States Daughters of 1812, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for exemptions of church and school property. (June 4, 1934, 48 Stat. 836, ch. 376.)

§ 47-827 [20: 734b]. National Society of the Sons of the American Revolution.

All property belonging to, or held by, the National Society of the Sons of the American Revolution in the District of Columbia, used and occupied by that society, so long as the same is owned and occupied, is exempt from taxation, national and municipal. (June 16, 1934, 48 Stat. 972, ch. 547.)

§ 47-828 [20: 734c]. The American Legion—Lots 32 and 33.

The property situated in square 185 in the city of Washington, District of Columbia, described as lots 32 and 33, owned, occupied, and used by The American Legion, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provi-

sions of section 47-801, providing for exemptions of church and school property. (June 13, 1934, 48 Stat. 953, ch. 493.)

§ 47-829 [20: 735]. National Education Association.

All real property of the National Education Association of the United States within the District of Columbia, which shall be used by the corporation for the educational or other purposes of the corporation, other than the purpose of producing income, and all personal property and funds of the corporation, held, used, or invested for educational purposes aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however,* That this exemption shall not apply to any property of the corporation which shall not be used for or the income of which shall not be applied to the educational purposes of the corporation. Congress may from time to time alter, repeal, or modify this section, but no contract or individual rights made or acquired shall thereby be divested or impaired. (June 30, 1906, 34 Stat. 805, 808, ch. 3929, §§ 4, 11.)

#### COMPILER'S NOTE

The word "aforesaid" refers to the preceding sections of the act cited to the text.

§ 47-830 [20: 735a]. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.

The property situated in square numbered 67 in the city of Washington, District of Columbia, described as lot numbered 42, as per plat recorded in the office of the surveyor for the District of Columbia, in liber 27 at folio 135; lot numbered 43, as per plat recorded in said surveyor's office in liber 28 at folio 25; lot numbered 49 as per plat recorded in said surveyor's office in liber 40 at folio 15; and part of original lot numbered 5 described as follows: Beginning for the same at the northeast corner of said lot and running thence west along the south line of a public alley thirty feet wide forty-seven and seventeen one-hundredths feet to the east line of another public alley, thirty feet wide; thence south along the east line of said alley seventy-four feet; thence east forty-seven and seventeen one-hundredths feet to the west line of a public alley fifteen feet wide; thence north along the west line of said alley seventy-four feet to the place of beginning, occupied by the Society of the Cincinnati, a corporation of the District of Columbia, with all the buildings and improvements thereon, and the contents thereof are hereby exempt from all taxes so long as the same is so occupied and used, subject to the provisions of section 47-801, providing for the exemption of church and school property, subject to the proviso that said society shall maintain therein a national museum for the custody and preservation of historical documents, relics, and archives, especially those pertaining to the American Revolution, which museum shall be accessible to the public at such reasonable hours and under such regulations as may, from time to time, be prescribed by said society; and subject to the further proviso that if any part of said property is sold, then the exemption as to said part and said part only shall determine and if any part of said property is leased then the exemption shall cease for so long and so long only as said part is so leased. This exemption



to become effective on the date of the passage of this section. (Feb. 24, 1938, 52 Stat. 81, ch. 35.)

### Chapter 9.—FAMILY DWELLINGS OCCUPIED BY OWNER

Sec.

- 47-901. Quarterly payments—Statement of taxes—Interest.
- 47-902. Extension of time of payment.
- 47-903. Restrictions on sale for delinquent taxes.
- 47-904. Sales invalidated where based on errors in computation of taxes due.
- 47-905. Affidavit as to domicile and ownership.

#### § 47-901 [20:740]. Quarterly payments—Statement of taxes—Interest.

Each fiscal year, commencing with the fiscal year ending June 30, 1934, the assessor of the District of Columbia shall send to the owner of each family dwelling-house occupied by such owner upon written application therefor an itemized statement of the taxes payable with respect to such dwelling-house not less than thirty days prior to the time when the first instalment of real-estate taxes for such fiscal year becomes due and payable. Such statement shall include all real-estate taxes which are due and payable in such fiscal year and all instalments of special assessments which have been levied, charged, or assessed prior to, and are due and payable in, such fiscal year, with respect to the family dwelling-house occupied by the owner. Such taxes and assessments shall be payable, at the election of the taxpayer, in four equal instalments, in the months of September, December, March, and June, and no interest shall be payable with respect to any such instalment unless it is unpaid after the time it is due. Any real-estate tax or special assessment or any instalment thereof with respect to any family dwelling-house occupied by the owner thereof not included in such statement shall not be due or payable during the fiscal year for which the statement is sent; and any such tax or assessment or any instalment thereof otherwise chargeable, assessable, or payable during such fiscal year shall be included in the statement for the next succeeding fiscal year. (Feb. 28, 1933, 47 Stat. 1347, ch. 130, § 1.)

#### CROSS REFERENCE

Time for payment, delinquency, § 47-1209.

#### § 47-902 [20:741]. Extension of time of payment.

The collector of taxes of the District of Columbia shall extend the time for the payments of real-estate taxes and special assessments payable after January 1, 1933, on any family dwelling-house occupied by the owner thereof, or any instalment of such taxes or assessments, for not more than ninety days, if written application for such extension is filed with the collector before such taxes or instalment thereof are due. Such extension shall be granted only if, in the judgment of the collector of taxes, satisfactory evidence is presented by the owner that, through unemployment or other emergency, the owner is unable to make such payment. No such application shall be granted unless the application is accompanied by the payment, to the collector, of interest at the rate of 6 per centum per annum on the amount of the taxes or assessments

or instalments thereof for the time of the extension applied for. In any case in which the amount of the tax or assessment or instalment due is paid prior to the expiration of the period of the extension there shall be deducted from the amount payable an amount equal to such part of the interest payable with respect thereto as represents the unexpired portion of the period of the extension. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 2.)

#### § 47-903 [20:742]. Restrictions on sale for delinquent taxes.

No family dwelling-house occupied by the owner thereof shall be sold for delinquent personal or real-estate taxes or special assessments unless notice has been personally served upon such owner or sent by registered mail, addressed to him at such dwelling-house, not less than thirty days prior to the date of such sale. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 3.)

#### § 47-904 [20:743]. Sales invalidated where based on errors in computation of taxes due.

No sale for delinquent personal or real-estate taxes or special assessments with respect to a family dwelling-house owned by the occupier thereof shall be valid if such sale is in consequence of an error or omission in the computation of the amount of taxes due thereon. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 4.)

#### COMPILER'S NOTE

This is an exception from the general provision set out in § 47-1015.

#### § 47-905 [20:745]. Affidavit as to domicile and ownership.

This chapter shall be deemed as applying only to such occupant and owner as shall have filed with the assessor of the District of Columbia an affidavit as to domicile and ownership. The form of the affidavit shall be prepared by the assessor of the District of Columbia, and shall show the beginning of domicile, the time when ownership began, the street number, the number of the square and lot, and all trusts, if any, against the property. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 6.)

### Chapter 10.—REAL PROPERTY TAX SALES

Sec.

- 47-1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.
- 47-1002. Sale of property—Purchase by District.
- 47-1003. Deposit required—Certificate of sale—Tax deed—Redemption.
- 47-1004. Changed interest rates to apply only to sales after June 25, 1938.
- 47-1005. Property sold for taxes redeemable within two years from sale.
- 47-1006. Report of tax sale to be filed with recorder of deeds—Dispositive of surplus on redemption.
- 47-1007. Commissioners not to convey any property if sale is void.
- 47-1008. Payment of expenses of advertising.
- 47-1009. Assessor to furnish information.
- 47-1010. Assessor to keep list of property sold for taxes for public inspection.
- 47-1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.
- 47-1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.



Sec.

- 47-1013. Court to decree sale by collector of taxes—No penalty if defect in tax sale.
- 47-1014. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.
- 47-1015. Validity of sales not affected by certain errors in computation.

## REFUND OF TAXES

- 47-1016. Taxes erroneously paid to be refunded.
- 47-1017. Money paid for license not granted to be refunded.
- 47-1018. Money paid for redemption of property sold for taxes to go to redemption fund.

§ 47-1001 [20: 791]. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the commissioners of said District shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further*, That competitive proposals shall be invited by the Commissioners from the several newspapers published in the District of Columbia for publishing the said delinquent tax list. If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Commissioners of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 1; July 1, 1902, 32 Stat. 632, ch. 1358, § 1; July 3, 1926, 44 Stat. 834, ch. 759, § 9; Mar. 2, 1927, 44 Stat. 1303, ch. 271; May 21, 1928, 45 Stat. 650, ch. 659; Feb. 25, 1929, 45 Stat. 1268, ch. 314.)

## AMENDMENTS

The 1898, 1902, and 1926 acts contained a provision for the publication of a pamphlet and for notice of the publication thereof, the 1902 and 1926 acts altering the time and duration of the notice.

The 1927 amendment abolished this pamphlet and inserted the second sentence.

The 1928 and 1929 acts are appropriation acts that merely re-enact the provisions of the 1927 act.

## CROSS REFERENCES

Notice to owner under special provisions concerning family dwelling, § 47-903.

Sale of lands to pay personal property taxes, §§ 47-1301 to 47-1305.

Time for payment, delinquency, § 47-1209.

§ 47-1002 [20: 792]. Sale of property—Purchase by District.

Upon the day specified in section 47-1001 the Commissioners shall proceed to sell or cause to be sold any and all property upon which such taxes remain unpaid, and continue to sell the same every secular day until all the real property as aforesaid in section 47-1001 shall have been brought to auction and sold. In case no other person bids the amount due, together with penalties and costs, on any lot, the said collector of taxes shall bid the amount due, together with penalties and costs, on the same and purchase it for the District. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 2; July 1, 1902, 32 Stat. 633, ch. 1358, § 2.)

## AMENDMENT

The 1902 amendment inserted the words "together with penalties and costs" in both places where they appear.

§ 47-1003 [20: 793]. Deposit required—Certificate of sale—Tax deed—Redemption.

The collector of taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full amount of his bid, including surplus, if any, to the collector of taxes within five days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said collector of taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within two days thereafter, the Commissioners of the District of Columbia shall set aside both sales for which the bids were made; and the said collector of taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said collector of taxes shall issue to the purchaser a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within two years from the last day of sale, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and one per centum thereon for each month or part thereof, a deed shall be given by the Commissioners of the District, or their successors in office, to the purchaser at such tax sale, his heirs or devisees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein authorized: *Provided*, That no deed shall be issued until all taxes and assessments appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: *Provided*, That no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the



highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said collector of taxes, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within two years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of the taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and one per centum thereon for each month or part thereof, or if any property two years after having been so bid off at any sale in the name of said District under sections 47-1001 to 47-1009 or any other law in force is not or has not been so redeemed as aforesaid (unless it shall be shown that the sale for taxes was irregular and void), then the commissioners of the District, or their successors shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: *Provided, however*, That no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: *And provided also*, That minors or other persons under legal disability be allowed one year after attaining full age or after the removal of such legal disability to redeem the property so sold, or bid off by the collector of taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with eight per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with eight per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall be redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: *Provided, however*, That failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: *Provided further*, That at any time after any property shall have been bid off as aforesaid by the collector of taxes, and before the expiration of the time allowed for the redemption thereof, the collector of taxes of said District, may issue to any person or persons, upon the payment of a sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed

by the owner or owners thereof within two years from the date of such certificate, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and one per centum thereon for each month or part thereof, a deed shall be given by the commissioners of the District of Columbia, or their successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the collector of taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or canceled, such property may be readvertised and sold at the next ensuing annual sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 3; June 25, 1938, 52 Stat. 1201, ch. 702, § 9.)

#### COMPILER'S NOTE

Sections 47-1011 to 47-1014 provide an alternative method to that given in this section for sale of property which has been bid in at a tax sale in the name of the District.

#### AMENDMENTS

The 1902 amendment added the first sentence and the part of the section following the words "Provided further," and lowered the first percentage provision from 15% per annum to 12% per annum and the second percentage provision from 10% per annum to 8% per annum, and provided the third percentage provision should be 12% per annum.

The 1938 amendments changed these provisions to their present amount.

§ 47-1004 [20: 793a]. Changed interest rates to apply only to sales after June 25, 1938.

These amendments (of section 47-1003) shall apply only to tax sales held after June 25, 1938, and section 47-1003, without said amendments, shall remain in full force and effect as to all tax sales held prior to June 25, 1938. (June 25, 1938, 52 Stat. 1201, ch. 702, § 9 (d).)

§ 47-1005 [20: 794]. Property sold for taxes redeemable within 2 years from sale.

The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within two years after the last day of sale by paying to the collector of taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of twelve per centum per annum after the date of such certificate of sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 4; July 1, 1902, 32 Stat. 635, ch. 1358, § 4.)



## AMENDMENT

The 1902 amendment added the words "exclusive of surplus," reduced the percentage provision from 15% per annum to 12% per annum, and deleted the following words which appeared in the 1898 act following the present last word: "Together with any tax or assessment which the holder of said certificate shall have paid between the days of sale and redemption, with interest on the same at the rate of ten per centum per annum," and the words "or authorized agent of the owner" following the word "owner" the first time it is used.

## NOTES TO DECISIONS

## IN GENERAL

The code provides for the sale of the real property subject to taxation on which said taxes are unpaid after the notice of sale and delinquent tax list shall have been advertised as required under the statute, and the redemption of the property so sold within two years. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

The statute supplies remedial procedure by which to obtain necessary information where there has been a refusal to file return as requested by law. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47-1006 [20: 795]. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.

The collector of taxes shall, within twenty days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the recorder of deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of Columbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the collector of taxes to the credit of the surplus fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: *Provided*, That if any property sold for taxes, as herein provided, is redeemed from such sale within two years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 5; July 1, 1902, 32 Stat. 635, ch. 1358, § 5.)

## AMENDMENT

The 1902 amendment added the words, "exclusive of Sundays and legal holidays," and the proviso; deleted the words "in sections one hundred and sixty-one and one hundred and sixty-two, chapter six, of the Revised Statutes of the United States, relating to the District of Columbia" and inserted in lieu thereof the words "as hereinbefore provided for."

§ 47-1007 [20: 796]. Commissioners not to convey any property if sale is void.

The said commissioners shall not convey any property sold for taxes if they shall discover, before the conveyance, that the sale was for any cause invalid and ineffectual to give title to the property sold; but they shall cancel the sale and cause the purchase money, together with interest at the rate of six per centum per annum, and the surplus, if any, to be refunded to the purchaser, his representatives or as-

signs: *Provided*, That if any conveyance made by the said commissioners, of property sold for taxes, shall at any time be set aside by decree of any court as invalid, the party in whose favor the decree is rendered shall pay to the party holding such conveyance, his heirs or assigns, the amount paid for such taxes and conveyances, together with interest at the rate of six per centum per annum. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 6; July 1, 1902, 32 Stat. 635, ch. 1358, § 6.)

## AMENDMENT

The 1902 amendment added the words, "together with interest at the rate of six per centum per annum, and the surplus, if any" and the proviso.

§ 47-1008 [20: 797]. Payment of expenses of advertising.

The expenses of advertising shall be paid by a charge of fifty cents for each lot or piece of property advertised. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 7; July 1, 1902, 32 Stat. 635, ch. 1358, § 7; May 21, 1928, 45 Stat. 650, ch. 659.)

## AMENDMENTS

The 1902 amendment reduced the charge from one dollar and twenty cents to fifty cents.

The 1928 amendment deleted the words "and the printing of said pamphlet" following the word "advertising" (see amendment note to § 47-1001).

§ 47-1009 [20: 798]. Assessor to furnish information.

The assessor of the District of Columbia shall furnish information with respect to taxes, special assessments, and valuations to any person having any interest in the property with respect to which such information is requested. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 8; July 1, 1902, 32 Stat. 635, ch. 1358, § 8; June 25, 1938, 52 Stat. 1201, ch. 702, § 8.)

## AMENDMENTS

The act of 1898 provided that a copy of a pamphlet listing the property on which taxes are in arrears, with notice of sale, should be delivered to any taxpayer applying therefor to the office of the collector of taxes.

The 1902 act provided: "The assessor of the District of Columbia shall have the records of his office open to inspection of the public, free of charge at such time or times as the public interest will permit."

§ 47-1010 [20: 799]. Assessor to keep list of property sold for taxes for public inspection.

It shall be the duty of the assessor for the District of Columbia to prepare and keep in his office, for public inspection, a list of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment levied or assessed upon the same, said list to show the date of sale and for what taxes sold; in whose name assessed at the time of sale; the amount for which the same was sold; when and to whom conveyed if deeded, or, if redeemed from said sale, the date of redemption. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

## AMENDMENTS

The duties set forth in this section were created and placed upon the collector of taxes by the 1879 act, cited to the text.

The 1892 act transferred them to the assessor.



The 1917 act transferred these duties back to the collector by the following words quoted therefrom: "and the collector of taxes shall hereafter be charged with the duties heretofore required of the assessor in relation to \* \* \* the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment."

The 1938 act, cited to the text, transferred these duties back to the assessor (§ 47-603).

**§ 47-1011 [20: 800a]. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.**

Whenever any real estate in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind whatsoever, and shall have been bid off in the name of the District of Columbia, and more than two years shall have elapsed since such property was bid off as aforesaid and the same has not been redeemed as provided by law, the Commissioners of said District may, in the name of the District aforesaid, petition the District Court of the United States for the District of Columbia, sitting in equity, to enforce the lien of said District for taxes or other assessments on the aforesaid property by decreeing a sale thereof; and up to the time of the sale hereinafter provided for such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property and all legal penalties and costs thereon, together with such other expenses as may have been incurred by said District prior to, and as a result of, the filing of the action herein provided for. (Mar. 2, 1936, 49 Stat. 1153, ch. 111, § 1.)

**COMPILER'S NOTE**

This act, §§ 47-1011 to 47-1014, repealed and superseded act of February 14, 1929, 45 Stat. 1173, ch. 197, § 1, D. C. Code 1929, title 20, § 800. Section 2 of the act of February 14, 1929, repealed all acts and parts of acts inconsistent therewith. Sections 47-1011 to 47-1014 provide an alternative method for selling property bid in for the District at tax sales. For the older method, see § 47-1003.

**§ 47-1012 [20: 800b]. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.**

Before any such action shall be instituted, the aforesaid Commissioners shall cause notice to be given in the name appearing upon the records of the assessor as the owner of such property, by registered mail directed to the last known address of such person, and by publication once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, against said person and "all other persons having or claiming to have any right, title, or interest in or to the real estate proposed to be proceeded against, their heirs, devisees, executors, administrators, and assigns," by such designation, to appear before them on a day certain, which day shall be at least ten days after the last publication of said notice, and show cause, if any they have, why the said real estate should not be proceeded against. For the purpose of the proceedings herein provided for, the person appearing by the assessor's records, at the time of the first publication of notice, as the owner of such property, and any other persons who may appear in response to the publication aforesaid and claim to

have an interest in such property, shall be deemed proper parties defendant in any such proceedings. Upon the filing of the petition aforesaid, the court shall enter an order directed to the person or persons named as defendants therein and "to all other persons having or claiming to have any right, title, or interest in the real estate proposed to be sold, their heirs, devisees, executors, administrators, and assigns," by such designation, directing them to appear on a day certain, which day shall be not less than thirty days after the date of the last publication of said order, and show cause, if any they have, why said real estate should not be proceeded against and sold. The said order shall be published once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, and such publication shall be considered as sufficient service upon such person or persons as cannot be found by the marshal within the District of Columbia or who are nonresident or unknown, their heirs, devisees, executors, administrators, and assigns; and the proceedings or sale of such real estate shall not be rendered invalid if the true owner or owners or any other person or persons having any right, title, or interest in said real estate shall not be included as a party to the suit, if it shall appear that the publication herein provided for shall have been duly made. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 2.)

**§ 47-1013 [20: 800c]. Court to decree sale by collector of taxes—No penalty if defect in tax sale.**

Upon proof in said suit of the failure of the owner of any such property to redeem the same as provided by law, the court shall, without unreasonable delay, decree a sale of the property to satisfy the lien of the District of Columbia for taxes, assessments, penalties, interest, and costs, and any other costs or expenses that have been incurred by said District prior to or after the institution of suit and in connection therewith, which said costs shall include court costs, but in no such case shall there be any allowance by the court of a docket fee, attorney's fee, or trustee's commission. All such sales shall be conducted by the collector of taxes or his deputy, by public auction either in the office of said collector or in front of the premises to be sold, as the court may determine, after advertisement for ten consecutive days in some daily newspaper published and circulated generally in the District of Columbia: *Provided*, That if it shall appear that there were any substantial defects in any tax sale no part of the penalties and charges incidental to such sales shall be collectible; but nothing herein contained shall in any wise affect any cost incurred by the District of Columbia in the institution and prosecution of the suit. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 3.)

**§ 47-1014 [20: 800d]. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.**

Every such sale shall be reported to and confirmed by said equity court, and no sale shall be made for an amount less than such aggregate taxes, interest, and costs incurred in the institution of suit, including advertising and sale, unless by express order of the court. Any surplus remaining from sales made under sections 47-1011 to 47-1014 shall be paid by



the collector of taxes into the registry of the court, to abide its further order for payment to the person or persons entitled thereto; and any such moneys remaining unclaimed for a period of five years after confirmation of any such sale shall be paid into the Treasury of the United States and credited to the revenues of the District of Columbia. Upon confirmation of such sale by order of court and payment of the purchase price, and upon full compliance with all of the terms of sale, the clerk of the court shall execute and deliver to the purchaser a deed to the property so sold, which deed shall convey to said purchaser all of the right, title, and estate of all persons whether named in such suit or not. (Mar. 2, 1936, 49 Stat. 1155, ch. 111, § 4.)

§ 47-1015 [20: 801]. Validity of sales not affected by certain errors in computation.

No sale of any real property for taxes shall be impaired or made void by reason of any error of the proper officers in making a computation of the amount of taxes due, the expenses attendant on the advertisement and sale, or of the purchase-money and the interest thereon, notwithstanding the sum erroneously computed may have been paid by the purchaser, his heirs or assigns; but all such sales and the deeds which may be granted on the certificates then issued shall be valid and binding as if no such error had been made. (R. S., D. C., § 173.)

#### COMPILER'S NOTE

Family dwellings occupied by the owner are exempted from this provision, see § 47-904.

#### REFUND OF TAXES

§ 47-1016 [20: 821]. Taxes erroneously paid to be refunded.

The commissioners are hereby authorized and instructed to cause all taxes erroneously paid in the District of Columbia to be refunded by the proper accounting and disbursing officers of said District, upon the certificate of the collector of such erroneous payment, which certificate shall state the nature of the error, the name of the person or persons by whom such excessive payment was made, and such other particulars as may be necessary to satisfy the accounting officers that such claim for reimbursement is just and equitable; and the said accounting and disbursing officers shall pay all moneys so refunded out of, and charge the same to, the fund which was credited with the erroneous payment. (Leg. Assem., Jan. 19, 1872, ch. 31, § 1, p. 52; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

#### AMENDMENT

The 1874 act vested power in the Commissioners.

#### CROSS REFERENCES

Cancellation of street assessments, § 7-632.  
Commissioners may grant refund of taxes and assessments where like assessments against similar property have been held void or erroneous by the courts, § 1-903.  
Reassessment when tax declared void, §§ 7-632, 47-721, 47-1106.  
Refund of business license fees and taxes, § 47-2350.  
Refund of income taxes, § 47-1534.  
Refund of motor vehicle taxes, § 47-1910.  
Refund of overpaid assessments for laying water mains and sewers, § 43-1518.

Refund of unemployment compensation contributions, § 46-304.

Refund on appeal, § 47-2407.

Waiver of interest or penalties upon unpaid taxes, § 47-307.

Water rents erroneously paid refunded in the same manner as erroneously paid taxes, § 43-1519.

See notes to § 47-1017.

§ 47-1017 [20: 822]. Money paid for license not granted to be refunded.

Whenever any person shall deposit money with the collector for the purpose of procuring a license, and said license shall have been subsequently refused by legal authority, it shall be the duty of the collector to refund the money so deposited, deducting therefrom an amount justly proportionate to the time during which such license shall have been used by the applicant therefor, or his representatives, and charge the amount so refunded to the fund which was credited with the original deposit. (Leg. Assem., Jan. 19, 1872, ch. 31, § 2.)

#### CROSS REFERENCES

No refund of fees under Alcoholic Beverage Control Act when license is suspended or revoked for violations of the act or regulations promulgated thereunder, § 25-118.

Refunding taxes or fees erroneously or mistakenly paid by life insurance companies, § 35-403.

Refund of fees erroneously paid under Real Estate and Business Brokers' License Act, § 45-1403.

Refund of fees for building permits, § 5-430.

Refund of license fees under Real Estate and Business Brokers' License Act, § 45-1405.

§ 47-1018 [20: 823]. Money paid for redemption of property sold for taxes to go to redemption fund.

All moneys paid or deposited according to law, for the redemption of property sold for taxes, shall be paid by the accounting and disbursing officers of the District to the person or persons entitled to receive it, on the presentation of the certificate of the collector. (Leg. Assem., Jan. 19, 1872, ch. 31, § 4.)

#### Chapter 11.—SPECIAL ASSESSMENTS

##### Sec.

47-1101. Protest against special assessments—Hearing—Report and exceptions—Decision.

47-1102. Abatement, reduction, or adjustment of special assessment.

47-1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

47-1104. Payment of special assessment after ratification—Sale for nonpayment.

47-1105. Assessment for removal of nuisance—Sale for nonpayment.

47-1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

47-1107. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

§ 47-1101 [20: 746]. Protest against special assessment—Hearing—Report and exceptions—Decision.

Any property owner aggrieved by any special assessment levied by the District of Columbia for any public improvement, other than a special assessment levied by a jury in a condemnation proceeding, may, within sixty days after service of notice of such assessment as provided in section 47-1103, file with the Commissioners of the District of Columbia a protest in writing against such assessment setting forth specifically the grounds of such protest and



may request a hearing thereon. No ground of protest not specifically set forth need be considered by the Commissioners. If a hearing is requested the same shall be held, in the discretion of the Commissioners, either before them or before one or more agents designated by them. At such hearing, physical facts which may be ascertained by view may be considered whether proved or not. If the hearing is held before an agent or agents, such agent or agents shall report in writing to the Commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing but which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the Commissioners, and the protestant may, before such report, findings, and recommendations are presented to the Commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the Commissioners with such report, findings, and recommendations. If the Commissioners find that the property of the owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment or is unequally or inequitably assessed with relation to other property abutting such improvement, said commissioners shall abate, reduce, or adjust such assessment in accordance with such findings. In computing the time hereinafter provided in which a special assessment may be paid without interest there shall be excluded therefrom the time between the date of the filing of any such protest and the date of mailing notice of the action thereon by the Commissioners. This section shall be effective only as to assessments levied for work completed subsequent to the passage and approval of sections 47-1101 to 47-1106. (June 25, 1938, 52 Stat. 1198, ch. 702, § 1.)

#### CROSS REFERENCES

Assessment of damages and benefits in condemnation proceedings to obtain land for alleys and minor streets, §§ 7-315 to 7-321, 7-324.

Assessment of damages and benefits in condemnation proceedings to obtain land for streets, §§ 7-201, 7-207 to 7-212.

Assessments for street, sidewalk, and sewer construction and repair, water connections, permit plan, §§ 7-606, 7-608, 7-610 to 7-612, 7-622 to 7-634.

Assessments in improving streets around Capitol, § 47-1107.

Disposition of assessments for work done on the permit plan, § 47-129.

Payment of special assessments upon recording of plats, §§ 47-713, 47-714.

Property exempted from assessments for improvements, § 47-803.

Redistribution of assessments, § 47-715 et seq.

Special assessments for laying water mains and sewers, § 43-1510 et seq.

Special assessments in condemnation proceedings to close alleys or streets under Street Adjustment Act, § 7-406.

Special assessment to reimburse Federal Emergency Administration of Public Works, § 9-206.

Special provisions concerning payment of assessments on family dwellings, §§ 47-901 to 47-906.

Time for payment, delinquency, § 47-1209.

#### NOTES TO DECISIONS

##### PAVING AND IMPROVING STREETS

A different rule prevails as to assessments for paving and improving streets than that which applies for laying water mains in the District, and the legislature may create taxing districts to meet the expense of local improvements and may fix the basis of taxation without encountering the Fourteenth Amendment unless its action is palpably arbitrary or a plain abuse. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525).

##### FRONT-FOOT RULE

Assessment under front-foot rule held invalid. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525); *Dougherty v. American Secur. & Trust Co.* (59 App. D. C. 301, 40 Fed. (2d) 813, cert. den. 282 U. S. 854, 75 L. Ed. 757, 51 Sup. Ct. 31); *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abutting properties. *Johnson v. Rudolph* (57 App. D. C. 29, 16 Fed. (2d) 525.)

In applying the front-foot rule, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Taliaferro v. Railway Terminal Warehouse Co.* (59 App. D. C. 376, 43 Fed. (2d) 271).

##### REVISION OF ASSESSMENTS

The front-foot rule cannot be applied to the assessment of a lot for paving an alley, which had a boundary of 233.17 feet facing two alleys, which could not be used commercially, and when the lot is assessed 222 percent higher than average assessment of other lots bordering the alleys, the assessment must be revised. *Willner v. Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

One seeking to cancel an alley-paving assessment on a lot, facing two alleys, which, under zoning regulations was limited to one-family detached house, and which was assessed 222 percent higher than other lots, was entitled to trial on the merits, and dismissal of complaint was improperly granted. *Willner v. Hazen* (71 App. D. C. 373, 111 Fed. (2d) 511).

§ 47-1102 [20: 746a]. Abatement, reduction, or adjustment of special assessment.

The Commissioners of the District of Columbia are authorized, but not directed, whenever in their judgment and discretion any property upon which a special assessment has been levied by the District of Columbia is not benefited by the improvement for which such special assessment was levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, to abate, reduce, or adjust such assessment in accordance with such finding. This section shall not apply to any assessment levied by a jury in a condemnation proceeding, or to any assessment levied for work completed subsequent to the passage and approval of sections 47-1101 to 47-1106, or to any assessment levied under sections 7-622 to 7-633: *Provided, however*, That nothing in this section shall be construed as affecting protests filed under the provisions of



sections 7-622 to 7-633 within the time prescribed in said sections. (June 25, 1938, 52 Stat. 1199, ch. 702, § 2.)

#### CROSS REFERENCE

See note to § 47-1101.

§ 47-1103 [20: 746b]. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

(a) When any special assessment for a public improvement, with the exception of assessments levied in condemnation proceedings, is levied by the District of Columbia upon any lot or parcel of land, notice of the levying of such assessment shall be served upon the record owner thereof in the manner herein provided and if there be more than one record owner of such lot or parcel of land notice served on one of the owners shall be sufficient. If the address of the owner be unknown or if the owner be a non-resident, such notice shall be served on his tenant or agent. The service of such notice shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant. If there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement once a week for two successive weeks in some daily newspaper of general circulation published in the District of Columbia. The cost of such publication shall be paid out of the general revenues of the District. The notice herein provided for shall be in lieu of any and all other notice now required by law.

This section shall apply to all assessments (other than assessments in condemnation proceedings) notice of which has not been served prior to the approval of sections 47-1101 to 47-1106.

(b) All special assessments authorized to be levied by the District of Columbia for public improvements, with the exception of assessments levied in condemnation proceedings, may be paid without interest within sixty days from the date of service of notice or of the last publication of notice as the case may be. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date of service or last publication as the case may be. Any such assessment may be paid in three equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of two years from date of service of notice or last publication of notice as the case may be, the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale.

This section shall apply only to assessments for public improvements completed subsequent to June 25, 1938, and assessments for public improvements completed on or before said date shall be levied and collected and bear interest as if said sections had not been passed, except that where service sewers

or water mains, or both, have been laid prior to the approval of said sections, but assessments therefor have not been levied for the reason that the property abutting the street, avenue, road, or alley in which the service sewer or water main is laid has not been subdivided, assessments for such sewers or water mains, or both, levied after the approval of said sections because of the subdivision of the property or its connection with the sewer or water main or both, shall be levied, collected, and bear interest as provided in this section. (June 25, 1938, 52 Stat. 1199, ch. 702, § 3.)

#### CROSS REFERENCE

See notes to § 47-1101.

§ 47-1104 [20: 746c]. Payment of special assessment after ratification—Sale for nonpayment.

Special assessments authorized to be levied in condemnation proceedings instituted by the District of Columbia may be paid without interest within sixty days after the ratification or confirmation of the verdict of the jury. Interest of one-third of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date of the ratification or confirmation of the verdict of the jury. Any such assessment may be paid in five equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of four years from the date of the ratification or confirmation of the verdict of the jury the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale. This section shall apply only to assessments ratified or confirmed by the court after June 25, 1938 and assessments ratified or confirmed on or before June 25, 1938 shall be levied and collected and bear interest as if sections 47-1101 to 47-1106 had not been passed. (June 25, 1938, 52 Stat. 1200, ch. 702, § 4.)

#### CROSS REFERENCE

See notes to § 47-1101.

§ 47-1105 [20: 746d]. Assessment for removal of nuisance—Sale for nonpayment.

All assessments authorized to be levied by the District of Columbia to reimburse it for money expended in the removal of nuisances shall bear interest at the rate of one-half of 1 per centum per month or part thereof from the date such assessment was levied. If any such assessment shall remain unpaid after the expiration of sixty days from the date such assessment was levied the property against which such assessment was levied may be sold for such assessment with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such assessment with interest and penalties thereon shall not have been paid



in full prior to said sale. (June 25, 1933, 52 Stat. 1200, ch. 702, § 5.)

CROSS REFERENCE

See note to § 47-1101.

§ 47-1106 [20: 746e]. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

The commissioners of the District of Columbia are hereby authorized and directed, in any case where a special assessment for public improvements in the District of Columbia, other than an assessment levied by a jury in a condemnation proceeding, has been or hereafter may be quashed, set aside, or declared void by any court for any reason other than the right of the public authorities to levy an assessment for such improvement, to reassess the property in accordance with the benefits received from such improvement, after notice to the owner of the property and an opportunity afforded him to be heard, the hearing to be had before such agent or agents as the commissioners may designate. At such hearing physical facts which may be ascertained by view may be considered, whether proved or not. Such agent or agents shall report in writing to the commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the commissioners, and the protestant may, before such report, findings, and recommendations are presented to the commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the commissioners with such report, findings, and recommendations. The reassessment shall be made within one year from the date the judgment or decree quashing, setting aside, or declaring void the assessment becomes final and not subject to review. Notice of such reassessment shall be given the property-owner in the same manner as if such reassessment was an original assessment, and such reassessment shall bear interest and be collected in the same manner as if such reassessment was an original assessment. (June 25, 1933, 52 Stat. 1201, ch. 702, § 6.)

CROSS REFERENCES

Reassessment where tax or assessment has been declared void, §§ 7-632, 47-721.

Relieving assessments for laying water mains and sewers, § 43-1515.

§ 47-1107 [20: 961]. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

In the improvements of streets about the Capitol, the Secretary of the Interior shall assess and collect the cost of all improvements made in front of all private property in the same proportion as charged by the District authorities for the same purpose. (R. S., D. C., § 152.)

Chapter 12.—TAXATION OF PERSONAL PROPERTY

Sec.

- 47-1201. Three assistant assessors to assess personal property.
- 47-1202. Personal property to be assessed at its full value.
- 47-1203. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.
- 47-1204. Tangible personal property stored in transit.
- 47-1205. "Resident of the District of Columbia" defined.
- 47-1206. Returns to be made in July of each year.
- 47-1207. Rate of taxation—Exceptions.
- 47-1208. Personal property exempt from taxation.
- 47-1209. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.
- 47-1210. Assessment of motor vehicles—Dealer's stock excepted—Enforcement.
- 47-1211. Taxable status of motor vehicles as tangible personal property.
- 47-1212. Mercantile establishments and carriers by water.
- 47-1213. Board of Personal Tax Appeals—Constitution—Proceedings.
- 47-1214. Clerk of Board of Personal Tax Appraisers—Appointment.

§ 47-1201 [20: 751]. Three assistant assessors to assess personal property.

The three members of the permanent Board of Assistant Assessors designated by the assessor, to assess personal property, shall under the direction and supervision of the said assessor, assess personal property in the District of Columbia as follows. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

COMPILER'S NOTES

The Revenue Act of July 26, 1939 (53 Stat. 1107, ch. 367, title IV, § 1) provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with respect to any year subsequent to the fiscal year ending June 30, 1939."

Title VII of said act of July 26, 1939, provided further: "The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

- "(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;
- "(2) For requiring the making, filing, and submission of returns and reports required by such laws;
- "(3) For the examination of all books, records, and other documents, and witnesses; and
- "(4) For the assessment and collection of such taxes, and the filing of liens therefor."

AMENDMENT

The 1926 amendment changed the number of assistant assessors from five to six (see amendment note to § 47-604), and raised the number in this section from two to three.

CROSS REFERENCES

- Board for assessment of personal property, § 47-605.
- Board of personal-tax appeals, § 47-1213.
- Criminal penalties, § 47-1303.

NOTES TO DECISIONS

CHARGE AGAINST OWNER OF PROPERTY

The personal property tax is a definite charge against the owner of the property and the real property tax is a definite charge against the property itself. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).



§ 47-1202 [20: 752]. Personal property to be assessed at its full value.

All personal property in the District of Columbia subject to taxation shall be listed and assessed at not less than the full and true value thereof in lawful money. (July 3, 1926, 44 Stat. 833, ch. 759. § 4.)

#### CROSS REFERENCES

Intangible property, see compiler's note to § 47-1201.

Omitted property, § 47-1213.

Taxation of motor vehicle, § 47-1210.

§ 47-1203 [20: 753]. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.

The assessor of the District of Columbia, or his successor in office, shall annually cause to be prepared a printed blank schedule of all tangible personal property and all general merchandise or stock in trade, owned or held in trust or otherwise, subject to taxation under the provisions of sections 47-1201 to 47-1214, 47-1301 to 47-1305, 47-1701 to 47-1709, and of the classes of corporations and companies to be assessed, together with the rate of tax prescribed, to which shall be appended an affidavit in blank, setting forth that the foregoing presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be. When said schedule is ready for delivery, notice thereof shall be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in said District, and a copy of said schedule shall be delivered to any citizen applying therefor at the office of the assessor. Every person, association, corporation, firm, or company in said District liable to taxation hereunder, and every association, company, executor, administrator, guardian, or trustee holding personal property in trust liable to taxation hereunder, shall, within thirty days after the last publication of said advertisement, as aforesaid, fill out the proper blanks in said schedule with a full and true statement, as in this section hereinbefore required, and make and sign an affidavit to the truth thereof, as aforesaid, before the assessor or one of the other members of the said board of personal-tax appraisers (and the members of the said board are hereby authorized to administer such and all oaths in connection with their duties as assessor and appraisers without charge), or before any person authorized by law to administer oaths; and the address in the District of Columbia of the person, corporation, or company making affidavit shall in each case be given below his, its, or their signature, and thereupon said board of personal-tax appraisers, or any one of the members thereof, shall assess said property at its fair cash value, and enter the same in the columns upon said blanks provided for that purpose, and the amount thus ascertained shall be entered upon the books for taxation for each fiscal year: *Provided*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall fail to make and deliver to the assessor or one of the said appraisers, within thirty days after the date of the last advertisement of the notice hereinbefore required, the schedule of his or

its said personal property owned, held in trust, or otherwise, as provided for in this section, then the said board of personal-tax appraisers hereinbefore provided for shall without delay, from the best information they can procure, make an assessment against such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, to which they shall add twenty per centum thereof: *Provided further*, That if the said board of personal-tax appraisers be not satisfied as to the correctness of the return of personal property made by any person, firm, association, corporation, company, administrator, executor, guardian, or trustee, said board may reject said return, and said board, or any one of the members thereof, may, from the best information he or they can procure, or by making such examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just; and notice of the rejection of the sworn return shall be given to the party interested by leaving the same at the address given in said return, and in all such cases there shall be a right of appeal from the action taken by said appraisers to the board of personal-tax appeals, or to their successors in office, within fifteen days after delivery of said notice of rejection as aforesaid: *And provided further*, That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall make a false affidavit touching the matters herein provided for, he or they shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the penalties for that offense now provided by section 22-2501. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1.)

#### CROSS REFERENCES

Omitted property, § 47-1213.

Other penal provisions, § 47-1303.

Penalties for perjury, § 22-2501.

#### NOTES TO DECISIONS

##### IN GENERAL

This is the only power under the statute for the re-assessment of personal property except as provided in § 759 (§ 47-1212). *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

##### TAX RETURNS

This section and § 47-1206 require that every resident shall file with the assessor of the District a tax return as of July 1, of each year, containing a true statement of his personal property for the purpose of taxation. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10.)

##### VALIDITY OF ASSESSMENT

It is fundamental to tax validity that there be a valid assessment. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

It is a rule without exception that if a property tax assessment is not properly made, there is no proper basis for a tax, and a tax attempted to be collected is void. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47-1204 [20: 755a]. Tangible personal property stored in transit.

Nothing in the District of Columbia Revenue Act of 1939 contained, nor shall any prior Act of Congress relating to the District of Columbia be deemed to impose upon any person, firm, association, company, or corporation a tax based upon tangible per-



sonal property owned and stored by such person in a public warehouse in the District of Columbia for a period of time no longer than is necessary for the convenience or exigencies of reshipment and transportation to its destination without the District of Columbia. (July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 6.)

CROSS REFERENCE

This section is part of the Revenue Act of 1939, see compiler's notes to § 47-1401.

§ 47-1205 [20: 756]. "Resident of the District of Columbia" defined.

Any person maintaining a place of abode in the District of Columbia on the 1st day of July of a taxable year, and for the three months prior thereto, shall be considered as a resident for the purpose of assessment on intangible property wherever located, unless evidence shall be submitted to the assessor of the District of Columbia, satisfactory to him, that such intangible personal property or the income thereof is taxed to said person in some other jurisdiction, or that the assets of a corporation or association represented by shares or certificates constituting such intangible personal property are taxed by the state in which such corporation or association is chartered or organized and in which such person has a legal residence, in lieu of a tax upon such shares or certificates: *Provided*, That Cabinet officers and persons in the service of the United States Government elected for a definite term of office shall not be considered as residents of the District of Columbia for the purposes of this section. (July 3, 1926, 44 Stat. 833, ch. 759, § 2; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 4.)

COMPILER'S NOTE

Insofar as any provision of this section applies exclusively to taxation of intangible personal property, it is inoperative, see Compiler's Note to § 47-1201.

AMENDMENT

The 1929 amendment deleted the words, "January 1 of any year, and for six months or more" and inserted in lieu thereof the following: "The 1st day of July of a taxable year, and for three months."

NOTES TO DECISIONS

BUSINESS OF HANDLING AND INVESTING FUNDS

Handling, investment, and reinvestment of substantial funds, by what must be a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District within the meaning of the statute and the applicable decisions. *Hazen v. National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

CONSTITUTIONALITY

One who questions the constitutionality of this act must show that he is within the class of persons with respect to whom the act is alleged to be unconstitutional, and the alleged unconstitutional feature injures him. *Heald v. District of Columbia* (259 U. S. 114, 66 L. Ed. 852, 42 Sup. Ct. 434).

GOVERNMENT EMPLOYEE

A resident of Boston who, upon his discharge from military service, entered the Government service in Washington, D. C., always intending to return to Boston when his service had expired, was not liable to tax on his intangible personality imposed by the District, since Boston continued to be his domicile. *Sweeney v. District of Columbia* (72 App. D. C. 30, 113 Fed. (2d) 25).

PAYING TAX NOT CONCLUSIVE AS TO RESIDENCE

Fact that appellant paid tax on home in District of Columbia did not create a residence there, for the statute expressly recognizes that persons "maintaining a place of abode" there may have a legal residence elsewhere. *Nixon v. Nixon* (329 Pa. 256, 193 Atl. 154).

"RESIDENT" CONSTRUED

"Resident" as used in this section means "domiciled," which is the normal and usual meaning of "resident." *Sweeney v. District of Columbia* (72 App. D. C. 30, 113 Fed. (2d) 25).

RETURN REQUIRED

A resident of the District must file personal property return for taxation whether the taxing statute of 1926 is constitutional or not, since it would be taxable under the 1916 act. *Cogger v. Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695, Cert. den. 299 U. S. 598, 81 L. Ed. 441, 57 Sup. Ct. 191).

A report must be had of the appellant's property in order that an assessment may be made, and this is so whether it is under the act of 1916 or the amending act of 1926. *Cogger v. Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Cogger v. Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

§ 47-1206 [20: 757]. Returns to be made in July of each year.

Returns of all personal property other than automobiles shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in section 47-1212. (July 3, 1926, 44 Stat. 833, ch. 759, § 6; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 6.)

AMENDMENT

This section in the 1926 act provided, "That the returns of personal property provided for in section 6 of the said act of July 1, 1902, shall be made during the month of March in the fiscal year preceding the one under which the assessment is to be levied, and, except as otherwise provided by law, the value of tangible and intangible property shall be taken as of January 1 for a basis of assessment for the next fiscal year."

COMPILER'S NOTE

Section 47-1212 is the act of Congress making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, approved July 1, 1902.

CROSS REFERENCE

See note to § 47-1203. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

NOTES TO DECISIONS

ERROR IN VALUATION

Taxpayer complied with his duty. He made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item. The difference between the amount of the investment and the value of the stocks was, at most, an error in valuation and not an omission, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47-1207 [20: 754]. Rate of taxation—Exceptions.

On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in section 47-1208), including vessels,



ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 2; June 29, 1922, 42 Stat. 669, ch. 249.)

#### COMPILER'S NOTES

This section formerly provided for a tax of 1½ per centum of the assessed value of the property, but the act of 1922, cited to the text, provided that the rates should be fixed annually by the Commissioners.

Acts of September 1, 1916, 39 Stat. 717, ch. 433, § 11, and March 3, 1917, 39 Stat. 1046, ch. 160, § 9, added the following paragraph: "The moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is herein provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six (section 47-1203) for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District not less than five-tenths of one per centum (.5%) of the value thereof: *Provided*, That savings deposits of individuals in a sum not in excess of five hundred dollars (\$500) deposited in banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided, further*, That such tax on moneys and credits shall not apply to bank notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company, nor to savings institutions having no capital stock, building associations, firemen's relief associations, secret and beneficial societies, labor unions, and labor-union relief associations, nor to beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions; nor shall the provisions of this section apply to life or fire insurance companies having no capital stock, nor to the shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege, but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed: *And provided further*, That corporations, limited partnerships, and joint-stock associations within said District liable to tax under the laws of said District on earnings or capital stock shall not be required to make any report or pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right, but such corporations, partnerships, and associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals." The provisions of this paragraph expired as of June 30, 1939, under act of July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 1, except for the purposes set out in the compiler's note under § 47-1201.

#### NOTES TO DECISIONS

##### BOND EXEMPTIONS

Considering the sweeping language of exemption in the bonding acts, there is no difficulty in holding that they apply to the District of Columbia as well as all other portions of the United States. *District of Columbia v. Riggs Nat. Bank* (58 App. D. C. 349, 30 Fed. (2d) 873).

##### CONSTITUTIONALITY

Federal taxation of the District of Columbia is valid even though residents have not the suffrage and may not vote on the expenditure of money raised. *Heald v. District of Columbia* (259 U. S. 114, 66 L. Ed. 852, 42 Sup. Ct. 434).

Should it ultimately be determined that Congress, disregarding the authoritative rulings of the Supreme Court, intended in this act to tax here property located elsewhere, it would by no means follow that as to persons and property clearly subject to taxation here the act would be void. *Heald v. District of Columbia* (50 App. D. C. 231, 269 Fed. 1015).

Constitutionality of section which levies tax on intangible personal property cannot be questioned in a mandamus proceeding to compel the District resident to file a return of his personal property. *Cogger v. Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

##### ENGAGING IN BUSINESS

The handling, investment, and reinvestment of substantial funds, by what must have been a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District of Columbia within the meaning of this section. *Hazen v. National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

##### RESIDENTS OF DISTRICT

As appellants are residents of the District and the property taxed is within the District, they are clearly subject to the provisions of this act. *Heald v. District of Columbia* (50 App. D. C. 231, 269 Fed. 1015).

##### REVIEW BY SUPREME COURT

Where the Court of Appeals of the District of Columbia attempts to interpret this statute it is not entitled to certify questions to the Supreme Court as to the validity of the statute, in view of prior decisions of this court holding that such interpretation would be subject to review by appeal to this court. *Heald v. District of Columbia* (254 U. S. 20, 65 L. Ed. 106, 41 Sup. Ct. 42).

#### § 47-1208 [20:755]. Personal property exempt from taxation.

The following personal property shall be exempt from taxation.

First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Second. Libraries, schoolbooks, wearing apparel, and all family portraits.

Third. Household and other belongings, not held for sale, to the value of one thousand dollars, owned by the occupant of any dwelling-house or other place of abode, in which such household and other belongings may be located.

Fourth. Household and other belongings not held for sale and owned by any person in the public service temporarily residing in the District of Columbia who is a citizen of any state or territory and who is taxed on such personal property in such state or territory. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 10.)

##### AMENDMENTS

The 1904 amendment deleted the words "articles of personal adornment" preceding and "and heirlooms" following the words "all family portraits" in the second subsection.

The 1913 amendment added the fourth subsection.

##### CROSS REFERENCES

Credit unions exempted from taxation except on real estate, § 26-516.

Exemptions from income taxes, § 47-1502.

Exemptions from real estate taxes, § 47-801 et seq.



NOTES TO DECISIONS

RETURN BY STATUTORY ASSIGNEE

Inasmuch as the statute imposes duty on bank president to file return, the receiver being the statutory assignee said duty devolves upon him. *Hazen v. Hardee* (64 App. D. C. 346, 78 Fed. (2d) 230).

§ 47-1209 [20: 758]. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.

Real-estate taxes and personal taxes of all kinds, excepting the tax on motor vehicles as herein provided, shall hereafter be payable semiannually in equal instalments in the months of September and March. If either of said instalments on real or personal property shall not be paid within the months when the same is due, said instalments shall thereupon be in arrears and delinquent, and there shall be added and collected with said tax a penalty of 1 per centum per month upon the amount thereof for the period of such delinquency, and such instalment or instalments, with the penalties thereon, shall constitute a delinquent tax to be collected in the manner now provided by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Board of Commissioners that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Board of Commissioners may, by petition to the District Court of the United States for the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5.)

RULES OF CIVIL PROCEDURE

Writs of mandamus have been abolished in District Courts, similar relief may be obtained by appropriate action on motion, rule 81 (b).

AMENDMENT

The 1929 amendment added the first sentence of the first paragraph and the second paragraph.

CROSS REFERENCES

Payment of taxes on family dwellings, §§ 47-901 to 47-906.

Time within which assessments may be made and collected, § 47-1408.

NOTES TO DECISIONS

RETURNS

Receiver of insolvent bank is obligated to file tax return, although 100 percent assessment on stock had been levied. *Hazen v. Hardee* (64 App. D. C. 346, 78 Fed. (2d) 230).

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Cogger v. Hazen* (66 App. D. C. 196, 85 Fed. (2d) 695).

Commissioners are specifically authorized to compel the filing of a sworn return by any person required by law to file such a return. *Hazen v. National Rifle Assn.* (69 App. D. C. 339, 101 Fed. (2d) 432).

VOID ASSESSMENT

A tax based upon a void assessment may be questioned or attacked wherever found. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47-1210 [20: 758a]. Assessment of motor vehicles—Dealers' stock excepted—Enforcement.

Motor vehicles taxable by the District of Columbia shall be assessed at their value as of April 1, each year, by the Board of Personal Tax Appraisers, subject to revision on appeal by the Board of Personal Tax Appeals, at the rate fixed for the taxation of other tangible personal property for the fiscal year ending the following June 30. The tax so assessed shall constitute the personal-property tax on such vehicles for the ensuing calendar year, and no motor vehicle registration tag for any tax year shall be issued for motor vehicles subject to taxation on April 1 each year by the District of Columbia until the amount of such tax has been paid in full: *Provided*, That this section shall not apply to motor vehicles constituting the stock in trade of dealers, which shall be taxed as now provided by law. The Commissioners of the District of Columbia shall make such rules and regulations as may be necessary or desirable to enforce the provisions of this section. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 3; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 4.)

COMPILER'S NOTE

This section is not affected by the motor vehicle fuel tax, § 47-1915.

AMENDMENT

The 1939 act changed the date in this section from "January first" to "April first."

CROSS REFERENCE

Registration dates, § 40-102.

Rules and regulations, § 47-2502.

§ 47-1211 [20: 758b]. Taxable status of motor vehicles as tangible personal property.

Notwithstanding any other provision of law, the tangible personal-property tax on motor vehicles, except when consisting of stock in trade of merchants, shall be prorated according to the number of months such property has a situs within the District; and all such motor vehicles shall be assessed at their value as of April 1 each year: *Provided, however*, That where a motor vehicle shall be registered in the District of Columbia for the first time on a date between April 1 of one year and April 1 of the succeeding year, such motor vehicle shall be assessed, for taxation for the period ending with the succeeding April 1, at its value as of date of application for such first registration. (July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 4.)

CROSS REFERENCE

This section is part of the Revenue Act of 1939. See compiler's note to § 47-1401.

§ 47-1212 [20: 759]. Mercantile establishments and carriers by water.

It shall be unlawful for any person or persons entering the District of Columbia subsequent to June 30th in each year and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, or engaging in the business of common carrier by vessels, ships, or boats, to conduct such business until a sworn statement of the value of such stock, vessels, ships, and boats has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unex-



pired portion of the fiscal year at the same rate as other personal taxes are levied: *Provided*, That this shall not apply to vessels, ships, or boats if it shall be made to appear by affidavit that any vessel, ship, or boat has been assessed for taxation and the taxes paid elsewhere.

The assessor is hereby authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons who shall fail to pay the tax required by this section within three days after beginning business shall be subject to distraint, and it shall be the duty of the assessor to place bills therefor in the hands of the collector of taxes, who shall seize sufficient of the goods of the delinquent to satisfy said tax: *Provided*, That said owner shall have the right of redemption within thirty days on payment of said tax, to which shall be added a penalty of one per centum, together with the cost of seizure. The collector shall sell such goods as are not redeemed at public auction, after advertisement for the three days preceding said sale. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 3; Apr. 28, 1904, 33 Stat. 563, ch. 1815, § 2.)

#### AMENDMENT

The 1904 amendment added words: "or engaging in the business of common carrier by vessels, ships, or boats" after the word "auction" as it appears in the first paragraph; the words "vessels, ships, and boats" after the word "stock" as it appears in the first paragraph; and, the proviso in the first paragraph.

#### NOTES TO DECISIONS

##### MERCHANDISE TAXABLE

This section relates to the assessment of merchandise belonging to persons who enter the District subsequent to June 30th and establish a place of business for the sale of goods, wares, and merchandise either at private sale or at auction. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

§ 47-1213 [20: 769]. Board of Personal Tax Appeals—Constitution—Proceedings.

The Board of Assistant Assessors hereinbefore provided for, with the assessor of the District of Columbia as chairman, shall compose a Board of Personal Tax Appeals, and as such Board of Personal Tax Appeals shall convene in a room, to be provided therefor by the said assessor, on the first Monday of September each year and shall continue in session to and including the first Monday of March of the following year, or until such time as their work shall have been completed, and public notice of the time and place of such meeting shall be given by advertisement for two consecutive secular days in two daily newspapers published in the District of Columbia. All appeals to said board shall be made within thirty days after notice of fixing an assessment. It shall be the duty of the Board of Personal Tax Appeals to hear all appeals made by any person or persons against the assessments made by the Board of Personal Tax Appraisers and to impartially equalize the value of said personal property as a basis for assessment. Any four members of the said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman shall be selected. They shall be empowered to diminish or increase such assessments as they may believe to

have been returned at other than their true value to such amount as, in their opinion, may be the value thereof, and the action of said board in such cases shall be final. Said board of assistant assessors shall also perform such other official duties as may be required of them by the assessor of the District of Columbia: *Provided*, That in case the personal tax appraisers shall fail to complete any of the duties in sections 47-1201 to 47-1214, 47-1301 to 47-1305, 47-1701 to 47-1709 to be by them performed within the time provided therefor the taxation provided by this section shall not by reason thereof be invalid; but such appraisers shall proceed with all reasonable diligence to complete such duties, and their acts shall be valid as if performed within the time fixed therefor. If, at any time within any current year, property subject to taxation under the provisions of sections 47-1201 to 47-1214, 47-1301 to 47-1305, 47-1701 to 47-1709 shall have been omitted from assessment, said Board of Personal Tax Appraisers shall immediately proceed to assess the same for the then current year, giving notice in writing to the persons or corporations so assessed, who shall have a right of appeal within ten days from date of said notice. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 11; July 3, 1926, 44 Stat. 834, ch. 759, § 7; Feb. 18, 1929, 45 Stat. 1223, ch. 259, § 7.)

#### AMENDMENTS

The 1926 amendment added the second sentence of the first paragraph.

The 1929 amendment changed the time for convening and continuing in session in the first paragraph.

#### NOTES TO DECISIONS

##### NOTICE

The statute provides that notice must be given and the opportunity presented to be heard in respect to the assessment of omitted property. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

The admission of the District that no such notice of the assessments was ever given to the company is fatal to the entire claim of the District. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

#### REASSESSMENT

It is not the policy of the law to favor reassessments. Unless the taxing statute expressly provides for a reassessment, such action is void. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

When taxpayer complied with the duty and made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item, the tax authorities could not reassess on a new basis on the theory that the shares of stock were omitted property, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

§ 47-1214 [20: 770]. Clerk of Board of Personal Tax Appraisers—Appointment.

The Commissioners of the District of Columbia are authorized and directed to appoint a clerk and assistant clerk to said Board of Personal Tax Appraisers, and three inspectors, all of whom shall perform such duties as may be assigned to them by the chairman of said board. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 19; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)

#### AMENDMENT

The law as enacted provided for salaries for these employees. Their salaries are now governed by the Classification Act of 1923.



### Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAX BY DISTRAINT OR LEVY

#### Sec.

- 47-1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.  
 47-1302. Sale of distrained goods for nonpayment of taxes.  
 47-1303. Penalties.  
 47-1304. Remedies for collection of intangible tax—Common law and equitable remedies available for collection of all taxes and assessments.  
 47-1305. Sale of real estate to satisfy personal tax.

#### § 47-1301 [20: 771]. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

When the taxes on personal property due and payable in each year shall not be paid as provided in section 47-1209, then and in that event the collector of taxes of the District of Columbia, or his deputy, may distrain sufficient goods and chattels found within the District of Columbia and belonging to the person, firm, association, corporation, company, administrator, executor, guardian, or trustee charged with such tax to pay the taxes remaining due, under the provisions of this law, from such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, together with the penalty thereon and the costs that may accrue; and for want of such goods and chattels said collector of taxes may levy upon and sell at auction the estate and interest of such person, firm, association, corporation, company, administrator, executor, guardian, or trustee in any parcel of land in said District; and in the case of the levy on any estate or interest in land the proceedings subsequent to sale thereof shall be the same as provided by law in the case of sales for arrears of taxes against real estate; and in the case of distraint of personal property or the levy upon real estate as aforesaid the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement, three times within one week, in one or more of the daily newspapers published in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale, and if the said taxes and penalty thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the day fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction, such property, or so much thereof as may be needed to pay such taxes, penalty, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail, in writing, every distraint and sale of personal property to the Commissioners of the District of Columbia or their successors in office, and his accounts in respect to every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and be audited by him. Any surplus resulting from such sale over and above such taxes, costs, and expenses shall be paid into the Treasury, and upon being claimed by the owner or owners of the goods and chattels aforesaid shall be paid to him or them upon

the certificate of the collector of taxes stating in full the amount of such excess. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 12.)

#### COMPILER'S NOTE

This chapter is not repealed by the provisions of chapter 14 of this title, § 47-1409.

#### CROSS REFERENCES

Distraint of goods of merchant entering District after June 30th for failure to pay taxes for balance of year, § 47-1212.

Provisions of this chapter apply to collection of income taxes, § 47-1527.

Special provisions concerning family dwellings, §§ 47-901 to 47-906.

#### NOTES TO DECISIONS

##### IN GENERAL

There is no provision in the statute for a lien on personal property; there is no provision of the statute to assess taxes on personal property when the owner is unknown; and there is no provision for the assessing of personal property taxes after the end of the current fiscal year. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

##### PROPERTY TO BE DISTRAINED

Any goods and chattels of the person charged with the taxes may be distrained. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

#### § 47-1302 [20: 772]. Sale of distrained goods for nonpayment of taxes.

When the collector of taxes shall distrain any goods and chattels in order to enforce payment of such taxes, the goods and chattels so seized shall be kept in a safe and convenient place until the day of the sale thereof; and the sale of said goods and chattels shall be at public auction, at such place as the collector of taxes may designate: *Provided, however*, That no such goods and chattels shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid therefor is not sufficient to meet the amount of tax, penalty, and costs thereon, said property thereupon shall be bid off by the said collector of taxes in the name of and by the District of Columbia, and the Commissioners of the District of Columbia may sell the same at private sale to satisfy the tax penalty, and cost thereafter without further notice. (Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

#### § 47-1303 [20: 773]. Penalties.

Any person or persons violating any of the provisions of sections 47-1201 to 47-1214, 47-1301 to 47-1305, and 47-1701 to 47-1709 shall be liable to a penalty of not exceeding five hundred dollars for each offense, said penalty to be imposed, upon conviction in the police court of the District of Columbia, as other fines and penalties are imposed, and said court is hereby invested with jurisdiction thereof; and in default of the payment of said penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 18.)

#### CROSS REFERENCE

False returns, penalties, § 47-1203.



§ 47-1304 [20: 774]. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.

The remedies provided in sections 47-1201 to 47-1214, 47-1301 to 47-1305, 47-1701 to 47-1709 for the collection of taxes on tangible personal property, shall be available also for the collection of taxes on intangible property.

In addition to the statutory remedies, all common-law and all equitable remedies shall also be available, either separately or concurrently with statutory remedies, as may be deemed advisable, for the collection of all taxes and special assessments of any kind whatsoever. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 1.)

#### COMPILER'S NOTE

The first paragraph of this section will become obsolete when all intangible personal property taxes accrued or due prior to July 1, 1939, are collected. See note to § 47-1201. It is retained here because it indicates the law applicable to the collection of such prior taxes.

§ 47-1305 [20: 775]. Sale of real estate to satisfy personal tax.

Where real estate is levied upon for the nonpayment of personal taxes of any kind, and the best price offered at an auction sale is not sufficient to pay taxes, interest, and penalties, said real estate may be sold under decree of the equity court as provided by law. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 2.)

#### CROSS REFERENCE

Special provisions concerning family dwellings, §§ 47-901 to 47-906.

### Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

#### Sec.

- 47-1401. Examinations and hearings by assessor—Examination of books—Proceedings brought in Police Court.
- 47-1402. Collection of personal property taxes—Neglect or refusal to pay, collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.
- 47-1403. Collection of personal property taxes—Surrender to collector unless subject to attachment.
- 47-1404. Collection of personal property taxes—Liability for failure to surrender property.
- 47-1405. Collection of personal property taxes—Exhibition of evidence or statements—Penalty.
- 47-1406. Collection of personal property taxes—Certificates of delinquent personal tax—Filing—Lien—Enforcement.
- 47-1407. Collection of personal property taxes—Wrongful distraints—Recoveries.
- 47-1408. Collection of personal property taxes—Time limitations—False returns—Delinquency.
- 47-1409. Collection of personal property taxes—Remedies under this chapter considered additional.
- 47-1410. Collection of personal property taxes—Failure to file return—Penalty.
- 47-1411. Collection of personal property taxes—Definitions.
- 47-1412. Collection of personal property taxes—Secrecy of returns.

§ 47-1401 [20: 965]. Examinations and hearings by assessor—Examination of books—Proceedings brought in police court.

The assessor of the District of Columbia or any person designated by him for the purpose of ascer-

taining the correctness of any return of personal property, tangible or intangible, for taxation or for the purpose of making a return where none has been made is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the assessor, or assistant assessor, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan police department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the assessor, or any assistant assessor, may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witness may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than \$300. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 1; May 16, 1938, 52 Stat. 356, ch. 223, § 1.)

#### COMPILER'S NOTES

The first sentence of the act of August 17, 1937, 50 Stat. 673, ch. 690 (cited to the text) provided that "This Act divided into titles and sections may be cited as the District of Columbia Revenue Act of 1937." That act is set forth in §§ 40-101 to 40-105, 47-1401 to 47-1412, 47-1601 to 47-1629, 47-1801 to 47-1808, 47-1901 to 47-1903, 47-1905, 47-1907, 47-1908, 47-1911, 47-2501 to 47-2504.

The first sentence of the act of July 26, 1939 (53 Stat. 1085-1119, ch. 367) provided that "This Act divided into titles and sections may be cited as the District of Columbia Revenue Act of 1939." That act is set forth in sections 11-332, 47-134, 47-1204, 47-1211, 47-1501 to 47-1543, 47-1601 to 47-1629, 47-1701, 47-2402, 47-2403, 47-2405, 47-2412, 47-2501, 47-2503.

Section 47-2501 (part of the revenue acts of 1937 and 1939) provides for the advancement of funds on requisition of commissioners, notwithstanding provisions of the District Appropriation Act of June 29, 1922.

Section 47-2502 gives the Commissioner authority to make rules and regulations to carry out the provisions of the revenue acts of 1937 and 1939.

Section 47-2503 provides as follows: "If any provision of the District of Columbia Revenue Act of 1937 and the Revenue Act of 1939, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."



## AMENDMENT

The 1938 amendment added the words "of any person" after the word "memoranda" the first time it appears, and the last two sentences.

## CROSS REFERENCE

Provisions of this chapter apply to collection of income taxes, § 47-1527.

## NOTES TO DECISIONS

## CONSTITUTIONAL LAW

In exercising its power to legislate for the District of Columbia, Congress acts as a legislature of national character and is not subject to constitutional limitations imposed on State legislatures, and, therefore, this statute (50 Stat. 673, 688) is not invalid as a violation of the commerce clause or the 14th amendment. *Neild v. District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

This statute (50 Stat. 673, 688) is an exercise of the power of Congress to legislate for the District of Columbia and not an exercise of its power to regulate commerce, and, therefore, is not invalid on the theory that the burden imposed must be uniform throughout the Nation, or that the exercise of this power is improvident. *Neild v. District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

## LIEN FOR DELINQUENT TAXES

Congress took notice of the problem of taxes on personality and among other things provided a method for the obtainment of a lien against a taxpayer delinquent in the payment of personal property taxes. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

## POWER TO TAX

The delegation to Congress of power to exercise exclusive legislation in all cases over the District of Columbia, includes the power to tax. *Neild v. District of Columbia* (71 App. D. C. 306, 110 Fed. (2d) 246).

§ 47-1402 [20: 965a]. Collection of personal property taxes—Neglect or refusal to pay, collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

If any person liable to pay any personal property tax to the District of Columbia neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector of taxes for the District of Columbia, or any person designated by him, to collect the said taxes, with interest and penalties thereon, by distraint and sale in the manner hereinafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, evidences of debt, and credits of the person delinquent as aforesaid. In case of such neglect or refusal of the person delinquent as aforesaid the collector, or the person designated by him, may levy upon all such property and rights to such property belonging to such person for the payment of the sum due with interest and penalties thereon and the costs that may accrue and the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement three times in one week in one or more daily newspapers in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale and if the said taxes, with interest and penalties thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the date fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to

sell at public auction such property or interest therein or so much thereof as may be needed to pay such taxes, interest, penalties, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail in writing every distraint and sale of personal property to the Commissioners of the District of Columbia, and his accounts in respect of every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and shall be audited by him. Any surplus resulting from such sale over and above such taxes, interest, penalties, costs, and expenses shall be paid into the Treasury of the United States to the credit of the District of Columbia, and upon being claimed by the owner or owners of the property aforesaid shall be paid to him or them by the accounting officers of said District upon the certificate of the collector of taxes stating in full the amount of such excess. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 2.)

## COMPILER'S NOTE

This section and succeeding ten sections provide additional method of collection to that set out in §§ 47-1301 to 47-1305.

## CROSS REFERENCES

This section is part of the Revenue Act of 1937, see compiler's notes to § 47-1401.

Time for payment, delinquency, § 47-1209.

§ 47-1403 [20: 965b]. Collection of personal property taxes—Surrender to collector unless subject to attachment.

Any person in possession of property or rights to property subject to distraint upon which a levy has been made shall, upon demand by the collector, or the person designated by him, surrender such property or rights to such collector or the person designated by him, unless such property or right is at the time of such demand subject to an attachment or execution under any judicial process. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 3.)

## CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

§ 47-1404 [20: 965c]. Collection of personal property taxes—Liability for failure to surrender property.

Any person who fails or refuses so to surrender any of such property or rights shall be liable in his own person and estate to the District of Columbia in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes including interest and penalties for the collection of which such levy has been made, together with costs and interest thereon, from the date of such levy. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 4.)

## CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

§ 47-1405 [20: 965d]. Collection of personal property taxes—Exhibition of evidence or statements—Penalty.

All persons and officers of companies and corporations are required, on demand of the collector, or the person designated by him, about to distraint or having distrained on any property or rights of prop-



erty, to exhibit all books containing evidence or statements relating to the subject of distraint or the property or rights of property liable to distraint for the tax due. A violation of this section shall be punished by a fine of not exceeding \$500 or by imprisonment not exceeding thirty days, or both, in a prosecution filed in the police court of the District of Columbia by the corporation counsel of the District in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 5.)

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

#### § 47-1406 [20: 965e]. Collection of personal property taxes—Certificates of delinquent personal tax—Filing—Lien—Enforcement.

In case of the neglect or refusal of any person to pay a personal-property tax within ten days after notice and demand, the collector of taxes, or the person designated by him, may file a certificate of such delinquent personal tax with the clerk of the District Court of the United States for the District of Columbia, which certificate from the date of its filing shall have the force and effect, as against the delinquent person named in such certificate, of the lien created by a judgment granted by said court, which lien shall remain in force and effect until the taxes set forth in said certificate, with interest and penalties thereon, shall be paid and said lien may be enforced by a bill in equity filed in said court. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 6.)

#### CROSS REFERENCES

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

Time for payment, delinquency, § 47-1209.

#### § 47-1407 [20: 965f]. Collection of personal property taxes—Wrongful distraints—Recoveries.

When a recovery is had in any suit or proceeding against the collector of taxes, or any person designated by him, under the District of Columbia Revenue Act of 1937 for a wrongful distraint or any other act done by him or for the recovery of any money exacted by or paid to him and by him paid into the Treasury of the United States in the performance of his official duty and the court certifies that there was probable cause for the act done by the collector or the person designated by him or that he acted under the directions of the Commissioners of the District of Columbia, no execution shall issue thereon, but the amount so recovered shall, upon final judgment, be paid by the District of Columbia in the same manner as judgments against the said District are paid. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 7.)

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

#### § 47-1408 [20: 965g]. Collection of personal property taxes—Time limitations—False returns—Delinquency.

Taxes on property reported in any return filed by a taxpayer shall be assessed within two years after

the filing of such return; and such taxes may be collected by distraint or by proceeding in court within three years after the date of the assessment of such taxes. In the case of a false or incorrect return, whether in good faith or otherwise, or of a failure to file a return within the time prescribed by law or of a failure to include taxable property or assets belonging to the taxpayer in any return filed by such taxpayer, whether in good faith or otherwise, the tax may be assessed at any time, and the tax may be collected by distraint or by proceeding in court within three years after the assessment of such tax. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 8; May 16, 1938, 52 Stat. 357, ch. 223, § 1 (b).)

#### AMENDMENT

The 1937 act provided, "The taxes to which this title relates shall be assessed within four years after such taxes became due and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time. Where the assessment of any tax to which this title relates has been made within such statutory period of limitation, such tax may be collected by distraint or by a proceeding in court only if begun within six years after the assessment of the tax."

#### CROSS REFERENCES

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

Time for payment, delinquency, § 47-1209.

See note to § 47-1213 for decision under earlier law. *Tumulty v. District of Columbia* (69 App. D. C. 390, 102 Fed. (2d) 254).

#### § 47-1409 [20: 965h]. Collection of personal property taxes—Remedies under this chapter considered additional.

The remedies provided by this chapter for the collection of personal property taxes are in addition to any other remedies available for the collection of said taxes. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 9.)

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

#### § 47-1410 [20: 965i]. Collection of personal property taxes—Failure to file return—Penalty.

Any person required to file a return or schedule, by the terms of an act entitled "An Act making appropriation[s] to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended, who shall fail or refuse to file the same within the time required by said Act as amended shall, upon conviction thereof, be fined not more than \$300 for each and every failure or refusal and each and every day that such failure or refusal continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. The penalty herein provided shall be in addition to the other



penalties provided in said Act of July 1, 1902, as amended. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 10, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

COMPILER'S NOTES

Bracketed letter [s] inserted by compiler.

The Act of July 1, 1902, as amended, appears in this code as §§ 1-237, 7-211, 7-507, 11-206, 22-702, 22-1208, 26-318, 28-2701, 35-105, 43-1105, 47-119, 47-121, 47-211, 47-604, 47-605, 47-709, 47-801, 47-802 47-1001 to 47-1009, 47-1201, 47-1203, 47-1207 to 47-1209, 47-1212 to 47-1214, 47-1301 to 47-1303, 47-1701 to 47-1704, 47-1706 to 47-1709, 47-2301 to 47-2350.

§ 47-1411 [20: 965j]. Collection of personal property taxes—Definitions.

As used in this chapter—

(a) The term "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, trustee, estate, or receiver.

(b) The term "return" means any return required to be filed by said sections of this chapter. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 11, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

§ 47-1412 [20: 965k]. Collection of personal property taxes—Secrecy of returns.

Except in accordance with proper judicial order and as otherwise provided by law, it shall be unlawful for the Commissioners of the District of Columbia or any persons having an administrative duty under this title to divulge or make known in any manner any information contained in any return required under this chapter. The persons charged with the custody of such returns shall not be required to produce any of them in any action or proceeding in any court except on behalf of the United States or the District of Columbia or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of such returns or the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein contained shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed by him in connection with his tax, nor prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the District of Columbia or any of his assistants of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty and failure to file any return or schedule required by law. Any violator of the provisions of this section shall be subject to the punishment provided by section 47-1410 of this title. (Aug. 17, 1937, 50 Stat. 673, ch. 690, § 12, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1 (c).)

CROSS REFERENCE

Secrecy of information received from Bureau of Internal Revenue, § 47-2504.

Chapter 15.—INCOME TAX

Sec.

- 47-1501. Application of law.
- 47-1502. Imposition of tax rate—Individuals—Corporations—Taxable income—Exemptions.
- 47-1503. Net income.
- 47-1504. Gross income and exclusions therefrom—Of individuals—Of corporations.
- 47-1505. Deductions from gross income.
- 47-1506. Gains or losses from sale of assets.
- 47-1507. Exchanges.
- 47-1508. Deductions not allowed.
- 47-1509. Personal exemptions and credit for dependents.
- 47-1510. Accounting periods.
- 47-1511. Period in which items of gross income included.
- 47-1512. Period for which deductions and credits taken.
- 47-1513. Installment basis.
- 47-1514. Inventories.
- 47-1515. Individual returns—Husband and wife—Persons under disability—Fiduciaries.
- 47-1516. Corporation returns.
- 47-1517. Taxpayer to make return whether return form is sent or not.
- 47-1518. Time for filing returns.
- 47-1519. Extension of time for filing returns.
- 47-1520. Allocation of income and deductions.
- 47-1521. Publicity of returns—Statistics—Penalties.
- 47-1522. Returns to be preserved.
- 47-1523. Fiduciary returns.
- 47-1524. Estates and trusts—Application—Computation—Net income—Different taxable year—Revocable trusts—Income to grantor—Definitions—Intangibles.
- 47-1525. Partnerships.
- 47-1526. Time of payment of tax—Extension—Advance payments—Fractional part of cent—Collector.
- 47-1527. Tax a personal debt.
- 47-1528. Information from the Bureau of Internal Revenue.
- 47-1529. Assessor to administer.
- 47-1530. Definition of "deficiency."
- 47-1531. Determination and assessment of deficiency—Protest—Appeal.
- 47-1532. Jeopardy assessment—Bond to stay collection.
- 47-1533. Period of limitation upon assessment and collection—Waiver—Collection after assessment.
- 47-1534. Refunds.
- 47-1535. Closing agreements.
- 47-1536. Compromises—Concealment of assets—Penalties.
- 47-1537. Failure to file return.
- 47-1538. Interest on deficiencies.
- 47-1539. Additions to the tax in case of deficiency—Penalty for fraud.
- 47-1540. Additions to the tax in case of nonpayment.
- 47-1541. Time extended for payment of tax shown on return.
- 47-1542. Penalties—"Person" defined.
- 47-1543. Definitions.

§ 47-1501 [20: 980]. Application of law.

The provisions of this chapter shall apply to the taxable year 1939 and succeeding taxable years, except that in the case of a taxable year beginning in 1938 and ending in 1939 the income taxable under said sections shall be that fraction of the income for the entire fiscal year equal to the number of days remaining in the fiscal year after January 1, 1939, divided by three hundred and sixty-five: *Provided, however,* That if the taxpayer's records properly reflect the income for that part of the fiscal year falling in the calendar year 1939, then the portion of the fiscal year's income taxable hereunder shall be the portion received or accrued during the calendar year 1939. (July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 1.)



## CROSS REFERENCE

The sections in this chapter are part of the Revenue Act of 1939, see Compiler's Notes to § 47-1401.

## STATUTORY REFERENCE

Federal income tax law, see Internal Revenue Code, U. S. C., title 26, § 1-373.

§ 47-1502 [20: 980a]. Imposition of tax rate—Individuals—Corporations—Taxable income—Exemptions.

(a) *Tax on individuals.*—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:

One per centum on the first \$5,000 of taxable income.

One and one-half per centum on the next \$5,000 of taxable income.

Two per centum on the next \$5,000 of taxable income.

Two and one-half per centum on the next \$5,000 of taxable income.

Three per centum on the taxable income in excess of \$20,000.

(b) *Tax on corporations.*—There is hereby levied for each taxable year upon the taxable income from District of Columbia sources of every corporation, whether domestic or foreign (except those organizations expressly exempt under paragraph (d) of this section), a tax at the rate of 5 per centum thereof.

(c) *Definition of "taxable income."*—As used in this section, the term "taxable income" means the amount of the net income in excess of the credits against net income provided in section 47-1509.

(d) *Exemptions from tax.*—There shall be exempt from taxation under this chapter the following organizations: Corporations, including any community chest, fund, foundation, cemetery association, teachers' retirement fund association, church, or club, organized and operated exclusively for religious, charitable, scientific, literary, educational, or social purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and labor organizations, trade associations, boards of trade, chambers of commerce, citizens' associations, or organizations, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, farmers' associations organized and operated on a co-operative basis exempt from income tax under section 101 (12) and (13) of the Internal Revenue Code (U. S. C., title 26, § 101); banks, insurance companies; building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, all of which pay taxes upon gross premiums or earnings under existing laws of the District of Columbia; voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such

association or their dependents, if (1) no part of their net earnings inures (other than such payments) to the benefit of any private shareholder or individual, and (2) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses; and corporations organized under Act of Congress, if such corporations are instrumentalities of the United States. (July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 2; July 2, 1940, 54 Stat. 734, ch. 524, title II.)

## AMENDMENT

The 1940 amendment deleted a comma following the word "cemetery" and added the words "farmers' associations organized and operated on a co-operative basis exempt from income tax under section 101 (12) and (13) of the Internal Revenue Code" following the word "individual" the second time said word appears.

## CROSS REFERENCES

Allocation of income and deductions to prevent tax evasion, § 47-1520.

Exemptions from personal property taxes, § 47-1208.

Exemptions from real estate taxes, § 47-801 et seq.

Partnerships, § 47-1525.

Returns required, § 47-1515 et seq.

Taxes on fiduciaries, trusts, and estates, § 47-1523 et seq.

Time for payment, § 47-1526.

§ 47-1503 [20: 980b]. Net income.

The term "net income" means the gross income of a taxpayer less the deductions allowed by this chapter. (July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 3.)

§ 47-1504 [20: 980c]. Gross income and exclusions therefrom—Of individuals—Of corporations.

(a) *Of individuals.*—The words "gross income," as used in this chapter include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not immune from taxation under the Constitution, or income derived from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership, or use of, or interest in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) *Of corporations.*—In the case of any corporation, gross income includes only the gross income from sources within the District of Columbia. The proper apportionment and allocation of income with respect to sources of income within and without the District may be determined by processes or formulas of general apportionment under rules and regulations prescribed by the Commissioner.

(c) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) *Life insurance.*—Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the



interest payments shall be included in gross income).

(2) *Annuities, and so forth.*—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter in respect to such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) of this paragraph.

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income).

(4) *Tax-free interest.*—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions.

(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement on account of such injuries or sickness.

(6) *Ministers.*—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation.

(7) *Income exempt under treaty.*—Income of any kind to the extent required by any treaty obligation of the United States.

(8) *Dividends from China trade act corporations.*—In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(9) *Income of foreign governments.*

(10) *Payments of benefits made to or on account of a beneficiary under any of the laws relating to*

veterans. (July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 4; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 4.)

#### AMENDMENT

The 1940 amendment added paragraph (10).

#### CROSS REFERENCE

Rules and regulations, § 47-2502.

#### STATUTORY REFERENCE

China Trade Act, 1922, 42 Stat. 849, U. S. C., title 15, ch. 4.

§ 47-1505 [20: 980d]. Deductions from gross income.

(a) *Items of deduction.*—In computing net income there shall be allowed as deductions:

(1) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) *Interest.*—All interest paid or accrued within the taxable year on indebtedness.

(3) *Taxes.*—Taxes paid or accrued within the taxable year, except—

(A) income taxes;

(B) estate, inheritance, legacy, succession, and gift taxes;

(C) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges; and

(D) taxes paid to any State or Territory on property, business, or occupation the income from which is not taxable under this chapter;

(4) *Losses in trade or business.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business, the income from which is subject to taxation under this chapter.

(5) *Losses in transactions for profit.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit which would be subject to taxation under this chapter, though not connected with the trade or business.

(6) *Intercompany dividends.*—In the case of a corporation, the amount received as dividends from a corporation which is subject to taxation under this chapter.

(7) *Bad debts.*—Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the assessor, a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the assessor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.



(8) *Insurance premiums.*—All fire, tornado, and casualty insurance premiums paid during the taxable year in connection with property held for investment or business.

(9) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate.

(10) *Charitable contributions.*—Contributions or gifts actually paid within the taxable year to or for the use of any corporation, or trust, or community fund, or foundation, maintaining activities in the District of Columbia and organized and operated exclusively for religious, charitable, scientific, literary, military, or educational purposes, no part of the net income of which inures to the benefit of any private shareholder or individual: *Provided*, That such deductions shall be allowed only in an amount which in all of the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subparagraph.

(11) *Wagering losses.*—Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(b) *Allocation of deductions.*—In the case of a taxpayer, other than an individual, the deductions allowed in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District and taxable under this title to a nonresident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the District shall be determined by processes or formulas of general apportionment under rules and regulations to be prescribed by the Commissioners. The so-called charitable contribution deduction allowed by subparagraph (10) of paragraph (a) of this section shall be allowed whether or not connected with income from sources within the District.

(c) *Corporations to file return of total income.*—A corporation shall receive the benefits of the deductions allowed to it under this chapter only by filing or causing to be filed with the assessor a true and accurate return of its total income received from all sources, whether within or without the District. (July 26, 1939, 53 Stat. 1039, ch. 367, title II, § 5.)

#### COMPILER'S NOTE

The word "which" has been inserted in the paragraph headed "Losses in transactions for profit" to make it correspond to the preceding paragraph.

§ 47-1506 [20: 980e]. Gains or losses from sale of assets.

(a) No gain or loss from the sale or exchange of a capital asset shall be recognized in the computation of net income under this chapter. For the purposes of this chapter, "capital assets" means property held by the taxpayer for more than two years (whether or not connected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be

included in the inventory of a taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(b) Gains or losses from the sale or exchange of property other than a capital asset shall be treated in the same manner as other income or deductible losses, and the basis for computing such gain or loss shall be the cost of such property or, if acquired by some means other than purchase, the fair market value thereof at the date of acquisition. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 6.)

§ 47-1507 [20: 980f]. Exchanges.

Where property is exchanged for other property, the property received in exchange for the purpose of determining the gain or loss shall be treated as the equivalent of cash to the amount of its fair market value; but when in connection with the reorganization, merger, or consolidation of a corporation a taxpayer receives, in place of stock or securities owned by him, new stock or securities of the reorganized, merged, or consolidated corporation, no gain or loss shall be deemed to occur from the exchange until the new stock or securities are sold or realized upon and the gain or loss is definitely ascertained, until which time the new stock or securities received shall be treated as taking the place of the stock and securities exchanged; provided such reorganization, merger, or consolidation is a "reorganization" within the meaning of the term "reorganization" as defined in section 112 (g) of the Federal Revenue Act of 1936. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 7.)

#### STATUTORY REFERENCE

Section 112 (g) of the Federal Revenue Act of 1936 is found as § 112 (g) of the Internal Revenue Code, U. S. C., title 26, § 112 (g).

§ 47-1508 [20: 980g]. Deductions not allowed.

(a) *General rule.*—In computing net income no deductions shall be allowed in any case in respect to—

- (1) personal, living, or family expenses;
- (2) any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;
- (3) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; and
- (4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(b) *Holders of life or terminable interest.*—Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections



(l) and (m) of section 23 of the Federal Revenue Act of 1936 as amended) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 8.)

COMPILER'S NOTE

The act of July 26, 1939, read "subsections (l) and (m) of section 23 of the Federal Revenue Act of 1926 as amended." The Revenue Act of 1926 contained no § 23. The Federal Revenue Act of 1936 does contain a § 23 which contains subsections (l) and (m) and these subsections contain subject matter which is pertinent. See U. S. C., title 26, § 23, Internal Revenue Code. The various Federal Revenue Acts from 1928 on contained a § 23, similar to that found in the 1936 act. For these reasons the words "Act of 1926" have been changed to read "Act of 1936."

CROSS REFERENCE

Allowance for depreciation, see § 47-1505 (9).

§ 47-1509 [20: 980h]. Personal exemptions and credit for dependents.

(a) *Credits*.—There shall be allowed to individuals the following credits against net income:

(1) *Personal exemption*.—In the case of a single person or married person not living with husband or wife, a personal exemption of \$1,000; in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500; a husband and wife living together shall receive but one personal exemption, the amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

(2) *Credit for dependents*.—\$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(b) *Change of status*.—If the status of the taxpayer, insofar as it affects personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned under rules and regulations prescribed by the Commissioners, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional portion of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(c) *In return for fractional part of year*.—In the case of a return made for a fractional part of a year, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bears to twelve months. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 9.)

§ 47-1510 [20: 980i]. Accounting periods.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal

year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the assessor does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 47-1543 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income-tax return, his income shall be computed, for the purposes of this title on the basis of the same calendar or fiscal year as in such Federal income-tax return. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 10.)

§ 47-1511 [20: 980j]. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47-1510, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included, in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 11.)

§ 47-1512 [20: 980k]. Period for which deductions and credits taken.

The deductions and credits provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 12.)

§ 47-1513 [20: 980l]. Instalment basis.

(a) *Dealers in personal property*.—Under regulations prescribed by the Commissioners, a person who regularly sells or otherwise disposes of personal property on the instalment plan may return as income therefrom in any taxable year that proportion of the instalment payments actually received in that year which the gross profit realized or to be realized when payment is completed bears to the total contract price.

(b) *Sales of realty and casual sales of personalty*.—In the case of (1) a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included



in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price, the income may, under regulations prescribed by the Commissioners, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) *Change from accrual to instalment basis.*—If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the instalment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other disposition of property made in any prior year shall not be excluded.

(d) *Gain or loss upon disposition of instalment obligations.*—If an instalment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect to which the instalment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This paragraph shall not apply to the transmission at death of instalment obligations if there is filed with the assessor, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment in such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 13.)

#### § 47-1514 [20: 980m]. Inventories.

Whenever in the opinion of the assessor the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the assessor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 14.)

#### § 47-1515 [20: 980n]. Individual returns—Husband and wife—Persons under disability—Fiduciaries.

(a) *Requirement.*—The following individuals shall each make under oath a return stating specifically

the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income.

(b) *Husband and wife.*—If a husband and wife living together have an aggregate net income for the taxable year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(c) *Persons under disability.*—If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) *Fiduciaries.*—For returns to be made by fiduciaries, see section 47-1523. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 15.)

#### CROSS REFERENCES

Extension of time to file, § 47-1519.

Partnership returns, § 47-1525.

Penalty for failure to file return, § 47-1537.

#### § 47-1516 [20: 980o]. Corporation returns.

Every corporation not expressly exempt from the tax imposed by this chapter shall make a return and pay a filing fee of \$25 which shall be credited against the tax. Such returns shall state specifically the items of its gross income and the deductions and credits allowed by this chapter, and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 16.)

#### CROSS REFERENCES

Extension of time to file, § 47-1519.

Rules and regulations, § 47-2502.

#### § 47-1517 [20: 980p]. Taxpayer to make return whether return form is sent or not.

Blank forms of returns for income shall be supplied by the assessor. It shall be the duty of the assessor



to obtain an income tax return from every taxpayer who is liable under the law to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 17.)

**§ 47-1518 [20: 980q]. Time for filing returns.**

All returns of income for the preceding taxable year shall be made to the assessor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year shall be made on or before the 15th day of the fourth month following the close of such fiscal year, unless such fiscal year has expired in the calendar year 1939 prior to the approval of this chapter, in which event returns shall be made on or before the 15th day of the third month following the approval of this chapter. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 18; Mar. 2, 1940, 54 Stat. 38, ch. 37, § 1.)

**AMENDMENT**

The 1940 amendment deleted the word "March" and inserted in lieu thereof the word "April," and deleted the word "third" and inserted in lieu thereof the word "fourth" as it now appears.

**§ 47-1519 [20: 980r]. Extension of time for filing returns.**

The assessor may grant a reasonable extension of time for filing income returns whenever in his judgment good cause exists and shall keep a record of every such extension. Except in case of a taxpayer who is abroad, no such extension shall be granted for more than six months, and in no case for more than one year. In the event time for filing a return is deferred, the taxpayer is hereby required to pay, as a part of the tax, an amount equal to 6 per centum per annum on the tax ultimately assessed from the time the return was due until it is actually filed in the office of the assessor. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 19.)

**§ 47-1520 [20: 980s]. Allocation of income and deductions.**

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District of Columbia, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the assessor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act (U. S. C., title 49, §§ 1-27 and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said act. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 20.)

**§ 47-1521 [20: 980t]. Publicity of returns—Statistics—Penalties.**

(a) *Secrecy of returns.*—Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return under this chapter.

(b) *When copies may be furnished.*—Neither the original nor a copy of the return desired for use in litigations in court shall be furnished where the District of Columbia is not interested in the result whether or not the request is contained in an order of the court: *Provided*, That nothing herein shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$1.

(c) *Reciprocal exchange of information with the United States and the several States.*—Notwithstanding the provisions of this section, the assessor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect income tax returns, file with the assessor or may furnish to such officer or representative a copy of any such income tax returns provided the United States or such State grant substantially similar privileges to the assessor or his representative, or to the proper officer of the District charged with the administration of this chapter.

(d) *Publication of statistics.*—Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or of the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the assessor may assist in the collection of such delinquent taxes.

(e) *Penalties for violation of this section.*—Any offense against the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or imprisonment for six months, or both, in the discretion of the court. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 21; Aug. 7, 1939, 53 Stat. 1248, ch. 546.)

**AMENDMENT**

The August 7, 1939, amendment amended paragraph (c) by inserting the words "the United States or" both times they now appear, the word "such" in the phrase "any such income tax returns" as it now appears and added the letter "s" to word "return" in said phrase.

**CROSS REFERENCE**

Secrecy of returns, § 47-2504 and notes.

**§ 47-1522 [20: 980u]. Returns to be preserved.**

Reports and returns received by the assessor under the provisions of this chapter shall be preserved for six years and thereafter until the assessor orders them to be destroyed. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 22.)

**§ 47-1523 [20: 980v]. Fiduciary returns.**

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law



in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) Every estate or trust the net income of which for the taxable year is \$1,000 or over;

(5) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income.

(b) *Joint fiduciaries.*—Under such regulations as the Commissioners may prescribe, a return by one of two or more joint fiduciaries and filed in the office of the assessor shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) *Law applicable to fiduciaries.*—Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 23.)

#### CROSS REFERENCES

Returns generally, § 47-1515 et seq.

Rules and regulations, § 47-2502.

§ 47-1524 [20: 980w]. Estates and trusts—Application—Computation—Net income—Different taxable year—Revocable trusts—Income to grantor—Definitions—Intangibles.

(a) *Application of tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates, or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation of tax.*—The tax shall be computed upon the net income of the estate or trust,

and shall be paid by the fiduciary, except as provided in paragraph (e) of this section (relating to revocable trusts) and paragraph (f) of this section (relating to income for benefit of the grantor).

(c) *Net income.*—The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (2) of this section in the same or any succeeding taxable year;

(2) in the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(3) there shall be allowed as a deduction (in lieu of the deductions for charitable contributions authorized by section 47-1505 (a) (10)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating a trust, is during the taxable year paid or permanently set aside for the purposes and in the manner provided in section 47-1505 (a) (10) or is to be used exclusively for the purposes enumerated in section 47-1505 (a) (10).

(d) *Different taxable year.*—If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under subparagraph (1) of paragraph (c) of this section, to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within or with his taxable year.

(e) *Revocable trusts.*—Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust shall be included in computing the net income of the grantor.



(f) *Income for benefit of grantor.*—Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 47-1505 (a) (10), relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(g) *Definition of "in discretion of grantor."*—As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

(h) *Income from intangible personal property held by trust.*—Income from intangible personal property held by any trust company or by any national bank situated in the District (with or without an individual trustee, resident or nonresident) in trust to pay the income for the time being to, or to accumulate or apply such income for the benefit of any nonresident of the District, shall not be taxable hereunder if—

(1) such beneficial owner or cestui que trust was at the time of the creation of the trust a nonresident of the District; and

(2) the testator, settlor, or grantor was also at the time of the creation of the trust a nonresident of the District. (July 26, 1939, 53 Stat. 1097, ch. 367, title II, § 24.)

#### § 47-1525 [20: 980x]. Partnerships.

(a) *Partners only taxable.*—Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity, and no income tax shall be assessable hereunder upon the net income of any partnership. All such income shall be assessable to the individual partners; it shall be reported by such partners as individuals upon their respective individual income returns; and it shall be taxed to them as individuals along with their other income at the rate and in the manner herein provided for the taxation of income received by individuals. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the part-

nership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed.

(b) *Partnership return.*—Every partnership shall make a return for each taxable year stating specifically the items of its gross income and the deductions allowed by this chapter, and shall include in the return the names and the addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 25.)

#### § 47-1526 [20: 980y]. Payment of tax—Extension—Advance payments—Fractional part of cent—Collector.

(a) *Time of payment.*—One-half of the total amount of the tax imposed by this chapter shall be paid on the 15th day of April following the close of the calendar year and the remaining one-half of the tax shall be paid on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of the tax imposed by this chapter shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of said tax shall be paid on the 15th day of the tenth month following the close of the fiscal year, except a fiscal year which expired in the calendar year 1939 prior to the approval of this chapter, in which event the tax shall be paid on the 15th day of the third month following the approval of this chapter.

(b) *Extension of time for payments.*—At the request of the taxpayer the assessor may extend the time for payment by the taxpayer of the amount determined as the tax, for a period not to exceed six months from the date prescribed for the payment of the tax or an instalment thereof. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) *Voluntary advance payment.*—A tax imposed by this chapter, or any instalment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(d) *Fractional part of cent.*—In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) *Payment to collector and receipts.*—The tax provided under this chapter shall be collected by the collector and the revenues derived therefrom shall be turned over to the treasury of the United States for the credit to the District in the same manner as other revenues are turned over to the United States treasury for the credit to the District. The collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 26; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 2.)

#### AMENDMENT

The 1940 amendment amended subsection (a) to read as it now appears. This subsection in the 1939 act pro-



vided that the entire tax be paid on the 15th day of March following the close of the calendar year or the 15th day of the third month following the close of the taxpayer's fiscal year.

**§ 47-1527 [20: 980z]. Tax a personal debt.**

Every tax imposed by this chapter, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District, and shall be entitled to the same priority as other District taxes, and the taxes levied hereunder and the interest and penalties thereon shall be collected by the collector of taxes in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 27.)

**§ 47-1528 [20: 980aa]. Information from the Bureau of Internal Revenue.**

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed by this chapter. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 28.)

**CROSS REFERENCE**

Secrecy of information, § 47-2504.

**§ 47-1529 [20: 980bb]. Assessor to administer.**

(a) *Duties of assessor.*—The assessor is hereby required to administer the provisions of this chapter. The assessor shall prescribe forms identical with those utilized by the Federal Government, except to the extent required by differences between this chapter and its application and Federal Act and its application. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income tax law so that computations of income for purposes of this chapter shall be, as nearly as practicable, identical with the calculations required for Federal income tax purposes. As soon as practicable after the return is filed the assessor shall examine it and shall determine the correct amount of the tax.

(b) *Statements and special returns.*—Every taxpayer liable to any tax imposed by this chapter shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioners from time to time may prescribe. Whenever the assessor judges it necessary he may require any taxpayer, by notice served upon him, to make a return, render under oath such statements, or keep such records as he deems sufficient to show whether or not such taxpayer is liable to tax under this chapter and the extent of such liability.

(c) *Examination of books and witnesses.*—The assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce

books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the assessor may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than \$300. All prosecutions under this section shall be brought in the police court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia.

(d) *Return by assessor.*—If any person fails to make and file a return at the time prescribed by law or by regulations made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return, the assessor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the assessor shall be prima facie good and sufficient for all legal purposes. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 29.)

**CROSS REFERENCE**

Rules and regulations, § 47-2502.

**§ 47-1530 [20: 980cc]. Definition of "deficiency."**

*Definition of "deficiency."*—As used in this chapter in respect of a tax imposed by this chapter "deficiency" means—

(1) the amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) if no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 30.)



**§ 47-1531 [20: 980dd]. Determination and assessment of deficiency—Protest—Appeal.**

If a deficiency in tax is determined by the assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the assessor, and a final decision thereon shall be made as quickly as practicable. Any deficiency in tax then determined to be due shall be assessed and paid, together with any addition to the tax applicable thereto, within ten days after notice and demand by the collector. The taxpayer may appeal from such assessment to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2412. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 31.)

**§ 47-1532 [20: 980ee]. Jeopardy assessment—Bond to stay collection.**

(a) *Authority for making.*—If the assessor believes that the collection of any tax imposed by this chapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.*—The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, the collection of which is stayed, at the time at which, but for this section, such amount would be due. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 32.)

**§ 47-1533 [20: 980ff]. Period of limitation upon assessment and collection—Waiver—Collection after assessment.**

(a) *General rule.*—Except as provided in paragraph (b) of this section—

(1) The amount of income taxes imposed by this chapter shall be assessed within two years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of two years

after the return is filed. This subparagraph shall not apply in the case of a corporation unless—

(A) such written request notifies the assessor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

(B) the dissolution is in good faith begun before the expiration of such twelve-month period; and

(C) the dissolution is completed.

(3) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

(4) For the purposes of subparagraphs (1), (2), and (3), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) *False return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *Waiver.*—Where before the expiration of the time prescribed in paragraph (a) for the assessment of the tax, both the assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (A) within three years after the assessment of the tax or (B) prior to the expiration of any period for collection agreed upon in writing by the assessor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 33.)

**§ 47-1534 [20: 980gg]. Refunds.**

Except as otherwise provided in section 47-1531 of this title, where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the time the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of the refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim was filed, then during the two years immediately preceding the allowance of the refund. Every claim for refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the assessor.



If the assessor disallows any part of a claim for refund, he shall send to the taxpayer by registered mail a notice of the part of the claim so disallowed. Within ninety days after the mailing of such notice, the taxpayer may file an appeal with the Board of Tax Appeals for the District of Columbia, in the same manner and to the same extent as set forth in sections 47-2403, 47-2404, 47-2407 to 47-2412. The remedy provided to the taxpayer under this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law; but no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court if the taxpayer has elected to file an appeal in accordance with this section. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 34.)

## CROSS REFERENCE

Tax refunds generally, § 47-1017 et seq.

## § 47-1535 [20: 980hh]. Closing agreements.

The assessor is authorized to enter into an agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Commissioners within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 35.)

## § 47-1536 [20: 980ii]. Compromises — Concealment of assets—Penalties.

(a) *Authority to make.*—Whenever in the opinion of the commissioners there shall arise with respect of any tax imposed under this chapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever the commissioners may compromise such tax.

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any closing agreement under this chapter or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(c) *Of penalties.*—The commissioners shall have the power for cause shown to compromise any penalty arising under this chapter. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 36.)

## § 47-1537 [20: 980jj]. Failure to file return.

In case of any failure to make and file a return required by this chapter, within the time prescribed by law or prescribed by the commissioners in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to wilful neglect, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 37.)

## § 47-1538 [20: 980kk]. Interest on deficiencies.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 1 per centum per month from the date prescribed for the payment of the tax (or, if the tax is paid in instalments, from the date prescribed for the payment of the first instalment) to the date the deficiency is assessed. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 38.)

## § 47-1539 [20: 980ll]. Additions to the tax in case of deficiency—Penalty for fraud.

(a) *Negligence.*—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 39.)

## § 47-1540 [20: 980mm]. Additions to the tax in case of nonpayment.

(a) *Tax shown on return.*—

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this chapter, or any instalment thereof, or any part of such amount or instalment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any instalment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47-1541 is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subparagraph (1) of this paragraph, interest



at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency*.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47-1538, or under section 47-1539, or any addition to the tax in case of delinquency provided for in section 47-1537 is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) *Fiduciaries*.—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of 1 per centum per month in lieu of the interest provided in subparagraphs (a) and (b) of this section. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 40.)

§ 47-1541 [20: 980nn]. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any instalment thereof, is extended under the authority of section 47-1526 (c), there shall be collected, as a part of such amount, interest thereon at the rate of 1 per centum per month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 41.)

§ 47-1542 [20: 980oo]. Penalties—"Person" defined.

(a) *Negligence*.—Any person required under this chapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply information, who fails to pay or collect such tax, to make such return, to keep such records, or supply such information, at the time or times required by law or regulations shall, upon conviction thereof (in addition to other penalties provided by law), be fined not more than \$300 for each and every such failure, and each and every day that such failure continues shall constitute a separate and distinct offense. All prosecutions under this paragraph shall be brought in the police court of the District of Columbia on information by the corporation counsel or his assistants in the name of the District of Columbia.

(b) *Wilful violation*.—Any person required under this chapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this chapter, who wilfully refuses to pay or collect such tax, to make such returns, to keep such records, or to supply such information, or who wilfully attempts in any manner to defeat or evade the tax imposed by this chapter shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, together with costs of prosecution.

(c) *Definition of "person."*—The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 42.)

§ 47-1543 [20: 980pp]. Definitions.

For the purpose of this chapter and unless otherwise required by the context—

(1) The word "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The word "taxpayer" means any person subject to a tax imposed by this title.

(3) The word "partnership" includes a syndicate, group, pool, joint adventure, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this chapter, a trust or estate or a corporation; and the word "partner" includes a member in such a syndicate, group, pool, joint adventure, or organization.

(4) The word "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The word "domestic" when applied to a corporation other than an association, means created under the law of United States applicable to the District of Columbia; and when applied to an association or partnership means having the principal office or place of business within the District of Columbia.

(6) The word "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(7) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(8) The word "individual" means all natural persons, whether married or unmarried; and also all trusts, estates, and fiduciaries acting for other persons; it does not include corporations or partnerships acting for or in their own behalf.

(9) The words "taxable year" mean the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed under this chapter. The term "taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter, the period for which such return is made.

(10) The words "fiscal year" mean an accounting period of twelve months and ending on the last day of any month other than December.

(11) The words "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this chapter.

(12) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling, or commercial activity in the District of Columbia; and include the performance of the functions of a public office.



(13) The word "stock" includes a share in an association, joint-stock company, or insurance company.

(14) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(15) The words "United States" when used in a geographical sense include only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(16) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its stockholders or members whether such distribution be made in cash, or any other property, other than stock of the same class in the corporation. It includes such portion of the assets of a corporation distributed at the time of dissolution as are in effect a distribution of earnings.

(17) The word "include," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(18) The word "Commissioners" means the Commissioners of the District of Columbia or their duly authorized representative or representatives.

(19) The word "District" means the District of Columbia.

(20) The word "assessor" means the assessor of the District of Columbia.

(21) The word "collector" means the collector of taxes of the District of Columbia. (July 26, 1939, 53 Stat. 1106, ch. 367, title II, § 43.)

## Chapter 16.—INHERITANCE AND ESTATE TAXES

### ARTICLE I—INHERITANCE TAX

Sec.

- 47-1601. Imposition of tax.
- 47-1602. Based on market value—Appraisal.
- 47-1603. Appraisal deemed true value—Tax to be lien—Exceptions.
- 47-1604. Report by decedent's personal representative—Contents—Payment.
- 47-1605. Collection of distributive share.
- 47-1606. Property not under control of personal representative.
- 47-1607. Life and future estates—Payment of tax—Lien.

### ARTICLE II—ESTATE TAX

- 47-1608. Imposition of tax—Additional levy on transfers.
- 47-1609. Credits—Restriction.
- 47-1610. Not to exceed difference between maximum credit and levy by States.
- 47-1611. Benefits to District.
- 47-1612. Tax on transfer of nonresidents' real and personal property.
- 47-1613. Executor to file copy of Federal return with assessor.
- 47-1614. Assessment on basis of return.
- 47-1615. Tax payable within seventeen months.

### ARTICLE III—GENERAL

- 47-1616. Liability of bond for assessments—Limitation.
- 47-1617. Monthly report of names of decedents by register of wills.
- 47-1618. Administration—Rules—Appeal—Hearing—Decision—Testimony—Production of books and records.
- 47-1619. Arrears.
- 47-1620. Enforcement.
- 47-1621. Failure to file return—False return—Penalty.
- 47-1622. Wilful failure to pay taxes, make return—Penalty.

Sec.

- 47-1623. Release of lien.
- 47-1624. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.
- 47-1625. Bureau of Internal Revenue to supply information to Commissioners.
- 47-1626. Assessor to determine tax if return not filed when due.
- 47-1627. Assessor may compound and settle tax.
- 47-1628. Definitions.
- 47-1629. Situs of intangibles—Trust estates—Aliens.

## ARTICLE I—INHERITANCE TAX

### § 47-1601 [20: 969]. Imposition of tax.

Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:

(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the father, mother, husband, wife, children by blood or legally adopted children, or any other lineal descendants or lineal ancestors of the decedent, shall be subject to a tax as follows: 1 per centum of so much of said property as is in excess of \$5,000 and not in excess of \$50,000; 2 per centum of so much of said property as is in excess of \$50,000 and not in excess of \$100,000; 3 per centum of so much of said property as is in excess of \$100,000 and not in excess of \$500,000; 4 per centum of so much of said property as is in excess of \$500,000 and not in excess of \$1,000,000; 5 per centum of so much of said property as is in excess of \$1,000,000.

(b) So much of said property so transferred to each of the brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of \$2,000 and not in excess of \$25,000; 4 per centum of so much of said property as is in excess of \$25,000 and not in excess of \$50,000; 6 per centum of so much of said property as is in excess of \$50,000 and not in excess of \$100,000; 8 per centum of so much of said property as is in excess of \$100,000 and not in excess of \$500,000; 10 per centum of so much of said property as is in excess of \$500,000.

(c) So much of said property so transferred to any person other than those included in paragraphs (a) and (b) of this section and all firms, institutions,



associations, and corporations shall be subject to a tax as follows: 5 per centum of so much of said property as is in excess of \$1,000 and not in excess of \$25,000; 7 per centum of so much of said property as is in excess of \$25,000 and not in excess of \$50,000; 9 per centum of so much of said property as is in excess of \$50,000 and not in excess of \$100,000; 12 per centum of so much of said property as is in excess of \$100,000 and not in excess of \$500,000; 15 per centum of so much of said property as is in excess of \$500,000.

(d) Executors, administrators, trustees, and other persons making distribution shall only be discharged from liability for the amount of such tax, with the payment of which they are charged, by paying the same as hereinafter described.

(e) Property transferred exclusively for public or municipal purposes, to the United States or the District of Columbia, or exclusively for charitable, educational, or religious purposes within the District of Columbia, shall be exempt from any and all taxation under the provisions of this section.

(f) Where any beneficiary has died or may hereafter die within six months after the death of the decedent and before coming into the possession and enjoyment of any property passing to him, and before selling, assigning, transferring, or in any manner contracting with respect to his interest in such property, such property shall be taxed only once, and if the tax on the property so passing to said beneficiary has not been paid, then the tax shall be assessed on the property received from such share by each beneficiary thereof, finally entitled to the possession and enjoyment thereof, as if he had been the original beneficiary, and the exemptions and rates of taxation shall be governed by the respective relationship of each of the ultimate beneficiaries to the first decedent.

(g) The provisions of sections 47-1601 to 47-1607 shall apply to property in the estate of every person who shall die after this chapter becomes effective.

(h) The transfer of any property, or interest therein, within 2 years prior to death, shall, unless shown to the contrary, be deemed to have been made in contemplation of death.

(i) All property and interest therein which shall pass from a decedent to the same beneficiary by one or more of the methods specified in this section, and all beneficial interests which shall accrue in the manner herein provided to such beneficiary on account of the death of such decedent, shall be united and treated as a single interest for the purpose of determining the tax hereunder.

(j) Whenever any person shall exercise a general power of appointment derived from any disposition of property, made either before or after the passage of this chapter, such appointment, when made, shall be deemed a transfer taxable, under the provisions of said sections, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power; and whenever any person possessing such power of appointment so derived shall omit or fail to exercise the same, within the time provided therefor, in whole or in part, a transfer taxable under the provisions of said sections shall be deemed to take place to the extent of such

omissions or failure in the same manner as though the person or persons thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by the will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(k) The doctrine of equitable conversion shall not be invoked in the assessment of taxes under sections 47-1601 to 47-1607. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 1; May 16, 1938, 52 Stat. 360, ch. 223, § 5 (a); July 26, 1939, 53 Stat. 1111, ch. 367, title V, art I, § 1.)

#### AMENDMENTS

The 1938 amendment added paragraphs (j) and (k).

The 1939 amendment deleted the words "and upon" following the word "decedents" the first time it appears, added the word "to" following the parenthetical statement in paragraph (a) and changed the rate provisions to that which now appears. The former rates provided in paragraph (a), 1% on the amount in excess of \$5,000; in paragraph (b), 3% on the amount in excess of \$3,000; and 5% on the amount in excess of \$1,000.

#### CROSS REFERENCES

Additional tax on right to transfer estate, § 47-1608 et seq.

General provisions for administration of act, § 47-1616 et seq.

#### CROSS REFERENCES

Situs of intangibles, § 47-1629.

The sections of this chapter are part of the Revenue Acts of 1937 and 1939, see compiler's notes to § 47-1401.

§ 47-1602 [20: 969a]. Based on market value—Appraisal.

The tax provided in section 47-1601 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 2; July 26, 1939, 53 Stat. 1112, ch. 367, title V, art. I, § 2.)

#### AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the word "assessor" the first time said word appears, and deleted the word "said" and inserted in lieu thereof the word "the" following the words "probate court of."

§ 47-1603 [20: 969b]. Appraisal deemed true value—Tax to be lien—Exceptions.

The appraisal thus made shall be deemed and taken to be the true value of the said property or interest therein upon which the said tax shall be paid, and the amount of said tax and the tax imposed by sections 47-1608 to 47-1615 shall be a lien on said property or interest therein for the period of ten years from the date of death of the decedent: *Provided, however,* That such lien shall not attach to any personal property sold or disposed of for value by an administrator, executor, or collector, of the estate of such decedent appointed by the District Court of the United States for the District of Columbia or by a trustee appointed under a will filed with the regis-



ter of wills for the District or by order of said court, or his successor approved by said court, but a lien for said taxes shall attach on all property acquired in substitution therefor for a period of ten years after the acquisition of such substituted property: *And provided further*, That such lien upon such substituted property shall, upon sale by such personal representatives, be extinguished and shall reattach in the manner as provided with respect of such original property. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, § 3; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (b); July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 3.)

#### AMENDMENTS

The 1938 amendment added the two proviso clauses.

The 1939 amendment deleted the words "of the District of Columbia" and inserted in lieu thereof the words "for the District" following the word "wills."

#### § 47-1604 [20: 969c]. Report by decedent's personal representative—Contents—Payment.

The personal representative of every decedent, the gross value of whose estate is in excess of \$1,000 shall, within fifteen months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all the property (real, personal, and mixed) of the decedent, the market value thereof at the time of the death of the decedent, the name or names of the persons to receive the same and the actual value of the property that each will receive, the relationship of such persons to the decedent, and the age of any persons who receive a life interest in the property, and any other information which the assessor may require. Said personal representative shall, within eighteen months of the date of the death of the decedent and before distribution of the estate, pay to the collector of taxes the taxes imposed by section 47-1601 upon the distributive shares and legacies in his hands and the tax imposed by section 47-1601 against each distributive share or legacy shall be charged against such distributive share or legacy unless the will shall otherwise direct. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, § 4; July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 4.)

#### AMENDMENT

The 1939 amendment added the word "gross" before the word "value" the first time said word appears, and deleted the words "of the District of Columbia" following the words "collector of taxes."

#### NOTES TO DECISIONS

##### CONSTRUCTION

There is no conflict between this section and 47-2403; they are merely alternative. *Rynex v. District of Columbia* (72 App. D. C. 346, 114 Fed. (2d) 842).

##### TIME OF PAYMENT

Section 47-2403 requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the eighteen months provision of this section. *Rynex v. District of Columbia* (72 App. D. C. 346, 114 Fed. (2d) 842).

#### § 47-1605 [20: 969d]. Collection of distributive share.

The personal representative of the decedent shall collect from each beneficiary entitled to a distributive share or legacy the tax imposed upon such dis-

tributive share or legacy in section 47-1601, and if the said beneficiary shall neglect or fail to pay the same within fifteen months after the date of the death of the decedent such personal representative shall, upon the order of the District Court of the United States for the District of Columbia, sell for cash so much of said distributive share or legacy as may be necessary to pay said tax and all the expenses of said sale. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 5; July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 5.)

#### AMENDMENT

The 1939 act reenacted this section without change.

#### § 47-1606 [20: 969e]. Property not under control of personal representative.

Every person entitled to receive property taxable under section 47-1601, which property is not under the control of a personal representative, and is over \$1,000 in value, shall, within six months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all property (real, personal, and mixed) received or to be received by such person; the market value of the same at the time of the death of the decedent and the relationship of such person to the decedent; and any other information which the assessor may require. The tax on the transfer of any such property shall be paid by such person to the collector of taxes within nine months after the date of the death of the decedent: *Provided, however*, That with respect to real estate passing by will or inheritance such report shall be made within fifteen months after the death of the decedent, and the tax on the transfer thereof shall be paid within eighteen months after the date of the death of the decedent. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 7; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (c); July 26, 1939, 53 Stat. 1113, ch. 367, title V, art. I, § 6.)

#### AMENDMENTS

The 1938 amendment added the proviso.

The 1939 act reenacted this section as it appeared in the 1937 act, amended by the 1938 act.

#### § 47-1607 [20: 969f]. Life and future estates—Payment of tax—Lien.

In the case of any grant, deed, devise, descent, or bequest of a life interest or term of years, the donee for life or years shall pay a tax only on the value of his interest, determined in a manner as the Commissioners by regulation may prescribe, and the donee of the future interest shall pay a tax only on his interest as based upon the value thereof at the time of the death of the decedent creating such interest. The value of any future interest shall be determined by deducting from the market value of such property at the time of the death of such decedent the value of the precedent life interest or term of years. Where the future interest is vested the donee thereof shall pay the tax within the time in which the tax upon the precedent life interest or term of years is required to be paid under the provisions of sections 47-1604 and 47-1606, as the case may be. Where the future interest is contingent the personal representative of such decedent or the per-



sons interested in such contingent future estate shall have the option of (1) paying, within the time herein provided for the payment of taxes due upon vested future interests, a tax equal to the mean between the highest possible tax and the lowest possible tax which could be imposed under any contingency or condition whereby such contingent future interest might be wholly or in part created, defeated, extended, or abridged; or (2) paying the tax upon such transfer at the time when such future interest shall become vested at rates and with exemptions in force at the time of the death of the decedent: *Provided*, That the personal representative or trustee of the estate of the decedent or the persons interested in the future contingent interest shall deposit with the assessor a bond in the penal sum of an amount equal to twice the tax payable under option (1) hereof. Such bonds shall be payable to the District and shall be conditioned for the payment of such tax when and as the same shall become due and payable. The tax upon the transfer of future interests or remainders shall be a lien upon the property or interest transferred from the date of the death of the decedent creating the interests and shall remain in force and effect until ten years after the date when such remainder or future interest shall become vested in the donee thereof. If the tax upon the transfer of a contingent future interest is paid before the same shall become vested, such tax shall be paid by the personal representative out of the corpus of the estate of the decedent, otherwise by the person or persons entitled to receive the same. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, § 10; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (d); July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. I, § 7.)

#### AMENDMENTS

The 1938 amendment added the words "determined in a manner as the Commissioners by regulation may prescribe" following the word "interest" the second time said word appears; deleted, following the "tax" the second time it appears, the following words "when his right of possession and enjoyment accrues. In the case of a decree, descent, bequest, or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the value of the property or interest therein coming to the beneficiary at the time when he becomes entitled to the same in possession or enjoyment. Said tax shall be a lien for the period of ten years on the property or interest therein from the date when said beneficiary becomes entitled to the same in possession or enjoyment" and inserted in lieu thereof the present remainder of the section.

The 1939 amendment deleted the word "such" and inserted in lieu thereof the word "the" before the word "decedent" immediately before the proviso and deleted the words "of Columbia" following the word "District".

#### CROSS REFERENCE

Rules and regulations, § 47-2502.

### ARTICLE II—ESTATE TAX

§ 47-1608 [20: 969g]. Imposition of tax—Additional levy on transfers.

In addition to the taxes imposed by sections 47-1601 to 47-1607, there is hereby imposed upon the transfer of the estate of every decedent who, after this chapter becomes effective, shall die a resident of the District, a tax equal to eighty per centum of the Federal estate tax imposed by section 810, Title 26,

U. S. Code, as amended, or as hereafter amended or reenacted. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 18; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 1.)

#### AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District."

#### CROSS REFERENCES

General provisions for administration of act, § 47-1616 et seq.

Situs of intangibles, § 47-1629.

Tax imposed by §§ 47-1608 to 47-1615 shall be lien for 10 years from death of decedent, § 47-1603.

Transfer tax on property of nonresidents, § 47-1612 et seq.

§ 47-1609 [20: 969h]. Credits—Restriction.

There shall be credited against and applied in reduction of the tax imposed by section 47-1601 the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate-tax purposes as prescribed in U. S. Code, title 26, chapter 3 (subchapter A), and section 3655, as amended, or as hereafter amended or reenacted: *Provided, however*, That only such taxes as are actually paid and credit therefor claimed and allowed against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 47-1608. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 19; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 2.)

#### STATUTORY REFERENCE

The words "U. S. Code, title 26, chapter 3 (subchapter A), and section 3655" are substituted for the words "Title III of the Revenue Act of 1926" used in the original enactment. Said chapter, with the exception of section 840 thereof is derived from title III of said Revenue Act, and comprises Chapter 3, subchapter A of the Internal Revenue Code.

#### AMENDMENT

The 1939 act reenacted the section as it appeared in the 1937 act making internal cross-reference changes.

§ 47-1610 [20: 969i]. Not to exceed difference between maximum credit and levy by States.

In no event shall the tax imposed by section 47-1608 of this chapter exceed the difference between the maximum credit which might be allowed against the Federal estate tax imposed by U. S. Code, title 26, chapter 3 (subchapter A) and section 3655, as amended, or as hereafter amended or re-enacted, and the aggregate amount of the taxes described in section 47-1609 (but not including the tax imposed by section 47-1608) allowable as a credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 20; July 26, 1939, 53 Stat. 1114, ch. 367, title V, art. II, § 3.)

#### STATUTORY REFERENCE

See note to § 47-1609.

#### AMENDMENT

The 1939 act reenacted this section as it appeared in the 1937 act making only internal cross reference changes.

§ 47-1611 [20: 969j]. Benefits to District.

The purpose of section 47-1608 is to secure for the District the benefit of the credit allowed under the



provisions of U. S. Code, title 26, section 810, as amended, or as hereafter amended or re-enacted, to the extent that the District may be entitled by the provisions of said section, by imposing additional taxes, and the same shall be liberally construed to effect such purpose: *Provided*, That the amount of the tax imposed by section 47-1608 shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 21; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 4.)

#### COMPILER'S NOTE

The words of the original enactment "credit allowed under the provisions of section 301 (c) of title III of the Revenue Act of 1926" have been translated to "U. S. Code, title 26, § 813 (b)," the section where such credit is now provided for.

#### AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District" both times it appears.

#### § 47-1612 [20: 969k]. Tax on transfer of nonresidents' real and personal property.

A tax is hereby imposed upon the transfer of real property or tangible personal property in the District of every person who at the time of death was a resident of the United States but not a resident of the District, and upon the transfer of all property, both real and personal, within the District of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy, and succession taxes actually paid to the several States exceeds the amount actually so paid for such taxes, exclusive of estate taxes based upon the difference between such credit and other estate taxes and inheritance, legacy, and succession taxes, as the value of the property in the District bears to the value of the entire estate, subject to estate tax under the applicable Federal Revenue Act. (Aug. 17, 1937, ch. 690, § 27, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g); July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 5.)

#### AMENDMENT

The 1939 amendment deleted the words "of Columbia" following the word "District" each time it appears.

#### CROSS REFERENCES

General provisions for administration of act, § 47-1616 et seq.

Situs of intangibles, § 47-1629.

#### § 47-1613 [20: 969l]. Executor to file copy of Federal return with assessor.

Every executor or administrator of the estate of a decedent dying a resident of the District or of a non-resident decedent owning real estate or tangible personal property situated in the District, or of an alien decedent owning any real estate, tangible or intangible personal property situated in the District, or, if there is no executor or administrator appointed, qualified, and acting, then any person in actual or constructive possession of any property forming a part of an estate subject to estate tax under this chapter shall, within sixteen months after the death of the decedent file with the assessor a copy of the

return required by U. S. Code, title 26, sections 820, 821 (a) (b) (c), and 864 (a) (b) (c), verified by the affidavit of the person filing said return with the assessor, and shall, within thirty days after the date of any communication from the Commissioner of Internal Revenue, confirming, increasing, or diminishing the tax shown to be due, file a copy of such communication with the assessor. With the copy of the Federal estate tax return there shall be filed an affidavit as to the several amounts paid or expected to be paid as taxes within the purview of section 47-1609: *Provided, however*, That in any case where the time for the filing of such return as required by U. S. Code, title 26, sections 820, 821 (a) (b) (c), and 864 (a) (b) (c), is extended without penalty by the Bureau of Internal Revenue, then the copy thereof verified as aforesaid may be filed with the assessor within thirty days after the expiration of said extended period. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 22; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 6.)

#### AMENDMENT

The 1939 amendment inserted the words "the estate of" following the words "administrator of" the first time said words appear; deleted the words "of Columbia" following the word "District" the first time said word appears and inserted in lieu thereof the next 34 words; deleted the words "within the District of Columbia" following the word "acting"; deleted the words "the gross" following the words "forming a part of" and inserted in lieu thereof the word "an"; inserted, following the word "estate" the fourth time the said word appears, the words "subject to estate tax under this title shall, within sixteen months after the death of the decedent"; and added the proviso.

#### § 47-1614 [20: 969m]. Assessment on basis of return.

The assessor shall, upon receipt of the return and accompanying affidavit, assess such amount as he may determine, from the basis of the return, to be due the District. Upon receipt of a copy of any communication from the Commissioner of Internal Revenue, herein required to be filed, the assessor shall make such additional assessment or shall make such abatement of the assessment as may appear proper. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 23; July 26, 1939, 53 Stat. 1115, ch. 367, title V, art. II, § 7.)

#### AMENDMENT

The 1939 act deleted the words "of the District of Columbia" following the word "assessor" the first time the said word appears, and deleted the words "of Columbia" following the word "District."

#### § 47-1615 [20: 969n]. Tax payable within 17 months.

The estate taxes imposed by sections 47-1608 to 47-1615 shall be paid to the collector of taxes within seventeen months after the death of the decedent: *Provided, however*, That in any case where the time for the payment of taxes imposed by U. S. Code, Title 26, sections 810, 813 (a) (2), and 860, is extended by the Bureau of Internal Revenue, then the tax imposed by sections 47-1608 to 47-1615 shall be paid within sixty days after the expiration of such extended period, together with interest as provided in section 47-1619: *Provided further*, That any additional assessment found to be due under section 47-1614 shall be paid to the collector of taxes within thirty days after the determination of such addi-



tional assessment by the assessor. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 24; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. II, § 8.)

#### AMENDMENT

The 1939 act deleted the section as it appeared in the 1937 act and inserted in lieu thereof the section as it now appears. The former section read as follows: "The tax imposed by this article shall be paid to the collector of taxes within thirty days after the determination of said taxes by the assessor of the District of Columbia."

### ARTICLE III—GENERAL

#### § 47-1616 [20: 969o]. Liability of bond for assessments—Limitation.

The bond of the personal representative of the decedent shall be liable for all taxes and penalties assessed under this chapter, except inheritance taxes and penalties imposed in relation to the transfer of property not under the control of such personal representative: *Provided*, That in no case shall the bond of the personal representative be liable for a greater sum than is actually received by him. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 6; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 1.)

#### AMENDMENT

The 1939 act added the exception.

#### § 47-1617 [20: 969p]. Monthly report of names of decedents by register of wills.

The register of wills of the District shall report to the assessor on forms provided for the purpose every qualification in the District upon the estate of a decedent. Such report shall be filed with the assessor at least once every month, and shall contain the name of the decedent, the date of his death, the name and address of the personal representative, and the value of the estate, as shown by the petition for administration or probate. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 8; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 2.)

#### AMENDMENT

The 1939 act deleted the words "of Columbia" following the word "District" both times said word appears.

#### § 47-1618 [20: 969q]. Administration — Rules — Appeal—Hearing—Decision—Testimony—Production of books and records.

The commissioners shall have supervision of the enforcement of this chapter and shall have the power to make such rules and regulations, consistent with said sections, as may be necessary for enforcement of said sections and efficient administration and to provide for the granting of extension of time within which to perform the duties imposed by this chapter. The assessor shall determine all taxes assessable under this chapter, and immediately upon the determination of same, shall forward a statement of the taxes determined to the person or persons chargeable with the payment thereof and shall give advice thereof to the collector of taxes.

The assessor is hereby authorized and empowered to summon any person before him to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to this chapter and the assessor is authorized to administer oaths and to take testimony for the purposes of the administration of

this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the assessor may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, § 9; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 3.)

#### AMENDMENT

The 1939 amendment the words "of the District of Columbia" following the word "commissioners" in the first paragraph and the word "assessor" the first time said word appears in the second paragraph; deleted the words "or any member of the Board of Assistant Assessors or Board of Personal Tax Appeals" in the second paragraph following the word "him" the first time said word appears and following the word "assessor" the second time said word appears; and, deleted three sentences from the end of the first paragraph which provided for an appeal to the Board of Personal Tax Appeals.

#### § 47-1619 [20: 969r]. Arrears.

If the taxes imposed by this chapter are not paid when due, 1 per centum interest for each month or portion of a month from the date when the same were due until paid shall be added to the amount of said taxes and collected as a part of the same, and said taxes shall be collected by the collector of taxes in the manner provided by the law for the collection of taxes due the District on personal property in force at the time of such collection: *Provided, however*, That where the time for payment of the tax imposed by this chapter is extended by the assessor or where the payment of the tax is lawfully suspended under the regulations for the administration of this chapter interest shall be paid at the rate of 6 per centum per annum from the date on which the tax would otherwise be payable. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 11; July 26, 1939, 53 Stat. 1116, ch. 367, title V, art. III, § 4.)

#### AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the words "collector of taxes," and the words "of Columbia" following the word "District," and added the proviso.

#### § 47-1620 [20: 969s]. Enforcement.

If any person shall fail to perform any duty imposed upon him by the provisions of this chapter or the regulations made hereunder the Commissioners may proceed by petition for mandamus to compel performance and upon the granting of such writ the court shall adjudge all costs of such proceeding against the delinquent. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 12; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 5.)

#### AMENDMENT

The 1939 amendment deleted the words "of the District of Columbia" following the word "commissioners."

#### CROSS REFERENCE

Writ of mandamus has been abolished in District Courts, similar relief may be obtained by appropriate action on motion, rule 81 (b).



**§ 47-1621 [20: 969t]. Failure to file return—False return—Penalty.**

Any person required by this chapter to file a return who fails to file such return within the time prescribed by this chapter, or within such additional time as may be granted under regulations promulgated by the commissioners, shall become liable in his own person and estate to the District in an amount equal to 10 per centum of the tax found to be due. In case any person required by this chapter to file a return knowingly files a false or fraudulent return, he shall become liable in his own person and estate to the said District in an amount equal to 50 per centum of the tax found to be due. Such amounts shall be collected in the same manner as is herein provided for the collection of the taxes levied under this chapter. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, § 13; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (e); July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 6.)

**AMENDMENTS**

The 1938 amendment reduced the first penalty from 25% per annum to 10% per annum.

The 1939 amendment deleted the words "of the District of Columbia" following the word "Commissioners," and the words "of Columbia" following the word "District."

**§ 47-1622 [20: 969u]. Wilful failure to pay taxes, make return—Penalty.**

Any person required by this chapter to pay a tax or required by law or regulation made under authority thereof to make a return or keep any records or supply any information for the purposes of computation, assessment, or collection of any tax imposed by this chapter, who wilfully fails to pay such tax, make any such return, or supply any such information at the time or times required by law or regulation shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof be fined not more than \$1,000 or imprisoned for not more than one year, or both. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 14; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 7.)

**AMENDMENT**

The 1939 act re-enacted this section as it appeared in the 1937 act.

**§ 47-1623 [20: 969v]. Release of lien.**

When the assessor is satisfied that the tax liability imposed by this chapter has been fully discharged or provided for, he may, under regulations prescribed by the Commissioners, issue his certificate, releasing any or all property from the lien herein imposed by this chapter. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 15; July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 8.)

**AMENDMENT**

The 1939 amendment deleted the words "of any estate" and inserted in lieu thereof the words "imposed by this title" following the word "liability," deleted the words "of said District" following the word "Commissioners," and deleted the words "of such estate" following the word "property."

**§ 47-1624 [20: 969w]. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.**

No person holding, within the District tangible or intangible assets of any resident or nonresident de-

cedent, of the value of \$300 or more, shall deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by the District Court of the United States for the District of Columbia, unless notice of the date and place of such intended transfer be served upon the assessor of the District of Columbia at least ten days prior to such delivery or transfer, nor shall any person holding, within the District of Columbia, any assets of a resident or nonresident decedent, of the value of \$300 or more, deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by said District Court without retaining a sufficient portion or amount thereof to pay any tax which may be assessed on account of the transfer of such assets under the provisions of sections 47-1601 to 47-1624 without an order from the assessor of the District of Columbia authorizing such transfer. It shall be lawful for the assessor of the District, personally, or by his representatives, to examine said assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain as herein required a sufficient portion or amount to pay the taxes imposed by this chapter shall render such person liable to the payment of such taxes. The assessor of the District may issue a certificate authorizing the transfer of any such assets whenever it appears to the satisfaction of said assessor that no tax is due thereon: *Provided, however,* That any corporation, foreign or domestic to the District having outstanding stock or other securities registered in the sole name of a decedent whose estate or any part thereof is taxable under this chapter may transfer the same, without notice to the assessor and without liability for any tax imposed thereon under this chapter, upon the order of an administrator, executor, or collector of the estate of such decedent appointed by the District Court of the United States for the District of Columbia, or by a trustee appointed under a will filed with the register of wills of the District, or appointed by said court, or his successor approved by said court: *Provided further,* That the lessor of a safe-deposit box standing in the joint names of a decedent and a survivor or survivors may deliver the entire contents of such safe-deposit box to the survivor or survivors, after examination of such contents by the assessor or his representative, without any liability on the part of the said lessor for the payment of such tax. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, § 16; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (f); July 26, 1939, 53 Stat. 1117, ch. 367, title V, art. III, § 9.)

**AMENDMENTS**

The 1938 amendment added the second proviso.

The 1939 amendment added the first proviso, and deleted the words "of Columbia" following the word "District" the first time the said word appears in the first, second, and fourth sentences and added the words "of the value of \$300 or more" both times they appear.

**§ 47-1625 [20: 969x]. Bureau of Internal Revenue to supply information to Commissioners.**

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and



required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed under this chapter or relative to any person whose estate is subject to the provisions of said sections. (Aug. 17, 1937, ch. 690, § 26, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g); July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 10.)

#### AMENDMENT

The 1939 amendment re-enacted the section as it appeared in the 1938 act.

#### CROSS REFERENCE

Secrecy of information, § 47-2504.

§ 47-1626 [20: 969y]. Assessor to determine tax if return not filed when due.

If any return required by this chapter is not filed with the assessor when due, the assessor shall have the right to determine and assess the tax or taxes from such information as he may possess or obtain. (July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 11.)

§ 47-1627 [20: 969z]. Assessor may compound and settle tax.

The assessor is authorized to enter into an agreement with any person liable for a tax on a transfer under sections 47-1601 to 47-1607, in which remainders or expectant estates are of such nature or so disposed and circumstanced that the value of the interest is not ascertainable under the provisions of this chapter, and to compound and settle such tax upon such terms as the assessor may deem equitable and expedient. (July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 12.)

§ 47-1628 [20: 969aa]. Definitions.

In the interpretation of this chapter unless the context indicates a different meaning the term "tax" means the tax or taxes mentioned in this title.

(a) The term "District" means the District of Columbia.

(b) The term "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized representative or representatives.

(c) The term "assessor" means the assessor of the District of Columbia or his duly authorized representative or representatives.

(d) The term "collector of taxes" means the collector of taxes for the District of Columbia, or his duly authorized representative or representatives.

(e) The term "Metropolitan Police Department" means the Metropolitan Police Department of the District of Columbia.

(f) The term "include" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The term "resident" means domiciled and the term "residence" means domicil. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, § 17; July 26, 1939, 53 Stat. 1118, ch. 367, title V, art. III, § 13.)

#### AMENDMENT

The 1939 act deleted the section of the 1937 act and inserted in lieu thereof the section as it now appears. The former section read, "The word 'person' when used

in this title shall include individuals, partnerships, associations, and corporations."

#### EFFECTIVE DATE

Section 14 of article III, title V, of the act of July 26, 1939, cited to the text provided that the provisions of this title should become effective at 12:01 antemeridian, the day immediately following its approval.

§ 47-1629. Situs of intangibles—Trust estates—Aliens.

Credits, securities, and other intangible personal property within the District not employed in carrying on any business therein by the owner shall be deemed to be located at the domicil of the owner for purposes of taxation under this chapter, and, if held in trust, shall not be deemed to be located in the District for purposes of taxation under this chapter solely because of the trustee being domiciled in the District: *Provided further*, That this section shall not apply to property owned by alien decedents, and that nothing herein contained shall affect the taxation by the District of any property owned by alien decedents which, at the time of the death of such decedents, shall be under the jurisdiction of the District or over which the District has control. (July 26, 1939, ch. 367, title V, § 15, as added July 10, 1940, 54 Stat. 747, ch. 568.)

### Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY AND PUBLIC UTILITY TAXES

#### Sec.

- 47-1701. Banks, gas, electric-lighting, and telephone companies.
- 47-1702. Bonding, title guaranty and fidelity companies.
- 47-1703. Savings banks.
- 47-1704. Building associations.
- 47-1705. Insolvent building or homestead associations.
- 47-1706. Private banks.
- 47-1707. Washington Stock Exchange.
- 47-1708. Note brokers.
- 47-1709. Private banks and note brokers to pay annual tax on the first day of July each year.

§ 47-1701 [20: 760]. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross earnings and each gas company, electric-lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 4 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric-lighting, and telephone company in the District of Columbia shall be taxed



as other real estate in said District: *Provided*, That street railroad companies shall pay 3 per centum per annum on their gross receipts and other taxes as provided by existing law, and insurance companies shall continue to pay the 2 per centum on premium receipts as provided by existing law. Each gas, electric-lighting, telephone and street railroad company shall pay, in addition to the tax herein mentioned, the corporate income tax imposed by sections 47-1501 to 47-1543, and the personal property tax on merchandise stock in trade. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; April 28, 1904, 33 Stat. 564, ch. 1815, § 2; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2.)

#### TAX ON PRIVILEGE OF DOING BUSINESS

The District of Columbia Revenue Act of 1937, August 17, 1937, 50 Stat. 688, ch. 690, title VI, § 16, as added by act of May 16, 1938, 52 Stat. 369, ch. 223, § 6 (a), provided that the entire title VI, imposing a tax on the privilege of doing business, should expire June 30, 1939. This title appeared as sections 970 to 970r of title 20 of the 1929 District of Columbia Code, Supp. V, Title VII of the Revenue Act of 1939, July 26, 1939, 53 Stat. 1119, ch. 367, provided that "The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

"(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;

"(2) For requiring the making, filing, and submission of returns and reports required by such laws;

"(3) For the examination of all books, records, and other documents, and witnesses; and

"(4) For the assessment and collection of such taxes, and the filing of liens therefor."

#### COMPILER'S NOTE

Section 2 (b) of title IV of the 1939 act, cited to the text, provided as follows: "This section shall not apply to gross earnings or gross receipts for any fiscal year ending the 30th day of June prior to the fiscal year ending June 30, 1940. Taxes shall be levied and collected for the fiscal years preceding the fiscal year ending June 30, 1940, under said paragraph 5 of section 6 of said act of July 1, 1902, as if this title had not been enacted."

#### AMENDMENTS

The 1904 amendment provided that that part of the section as it appeared in the 1902 act "shall be construed to mean that all street railroad companies shall pay four per centum per annum on their gross receipts within the District of Columbia and other taxes as provided by existing law."

The 1939 amendment added the words "or gross receipts, as the case may be" following the words "gross earnings" the first time said words appear; added after the word "June" in the first paragraph the words "and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross earnings and each gas company, electric lighting company, and telephone company"; changed the percentages in the proviso of the first paragraph; added the words "existing law" in the first sentence of the proviso; and, deleted the words added by and above quoted from the 1904 act.

#### REPEAL

The final sentence of (a) of act of July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2, read: "So much of the act approved October 1, 1890, entitled 'An act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby

repealed." 26 Stat. 625, ch. 1246, D. C. Code, 1901, §§ 715-748, D. C. Code, 1940, §§ 26-301, 26-304 to 26-336.

#### CROSS REFERENCE

This section is part of the Revenue Act of 1939, see Compiler's Notes to § 47-1401.

#### NOTES TO DECISIONS

##### IN GENERAL

This statute is all inclusive covering gross earnings from whatever source. *Potomac Elec. Power Co. v. Hazen* (67 App. D. C. 161, 90 Fed. (2d) 406).

This being a measure to tax the gross earnings of gas, electric and telephone companies, said tax is merely franchise in nature and therefore is not a burden on commerce. *Potomac Elec. Power Co. v. Hazen* (67 App. D. C. 161, 90 Fed. (2d) 406).

##### ELECTRIC COMPANY

Street equipment of electric power company, held not "real estate." *Rudolph v. Potomac Elec. Power Co.* (58 App. D. C. 54, 24 Fed. (2d) 882, 57 A. L. R. 865, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

##### FRANCHISE TAX

Franchise tax distinguished from property tax. *Potomac Electric P. Co. v. Rudolph* (58 App. D. C. 261, 29 Fed. (2d) 634, cert. den. 278 U. S. 656, 73 L. Ed. 565, 49 Sup. Ct. 185).

##### GAS COMPANY

A company engaged in the manufacture and supplying of gas may deduct from gross receipts the amount expended for raw materials from which gas is manufactured when the money that was spent for the raw materials had been taken from the capital of the company. *District of Columbia v. Georgetown Gas-Light Co.* (45 App. D. C. 63).

##### INTEREST ON GOVERNMENT BONDS

The act of April 24, 1917, § 1 (U. S. C., title 31, § 746) exempting interest on government bonds, etc., from taxation, held applicable to the tax imposed by this paragraph. *District of Columbia v. Riggs Nat. Bank* (58 App. D. C. 349, 30 Fed. (2d) 873, cert. den. 279 U. S. 846, 73 L. Ed. 991, 49 Sup. Ct. 343).

§ 47-1702 [20: 761]. Bonding, title, guaranty and fidelity companies.

All companies, incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, and all companies who furnish abstracts of titles to real property, or who insure real estate titles, shall pay to the collector of taxes of the District of Columbia one and one-half per centum of their gross receipts in the District of Columbia. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 6; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

#### AMENDMENT

The 1904 amendment struck out the 1902 section and inserted in lieu thereof the section as it now appears.

§ 47-1703 [20: 762]. Savings banks.

Savings banks having no capital stock and paying interest to their depositors shall, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount of their surplus and undivided profits on the 30th day of June preceding.

Incorporated savings banks paying interest to their depositors shall, through their president or cashier, make report under oath to the board of personal-tax



appraisers on or before the 1st day of August in each year as to the amount of their gross earnings, less the amount paid as interest to their depositors for the preceding year ending June 30th, and shall pay thereon to the collector of taxes of the District of Columbia four per centum per annum. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 7; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

#### AMENDMENT

The 1904 amendment added the second paragraph.

#### NOTES TO DECISIONS

##### FRANCHISE TAX

The tax imposed by this statute is clearly a franchise tax, and not a property tax on the earnings of banks as such. *Security Sav. & Commercial Bank v. District of Columbia* (51 App. D. C. 316, 279 Fed. 185).

#### § 47-1704 [20: 764]. Building associations.

Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

#### AMENDMENT

In the 1902 act this section read as follows: "Building associations shall pay to the collector of taxes of the District of Columbia four per centum per annum on their gross earnings for the preceding year ending June thirtieth."

#### § 47-1705 [20: 764a]. Insolvent building or homestead associations.

Whenever and after any building or homestead association, which was incorporated or doing business under the law of the District of Columbia, has ceased to do business by reason of insolvency no tax on personal property, either tangible or intangible, shall be levied, assessed, or collected by the District of Columbia against or from such association if such tax shall diminish the assets of such association necessary for the payment of the full amount due on share accounts in, or on shares of, such association to the holders thereof, and such tax, if heretofore levied, shall be abated as against any such associations as are or have been found by the comptroller of the currency to be insolvent. (Aug. 5, 1939, 53 Stat. 1210, ch. 446.)

#### § 47-1706 [20: 765]. Private banks.

Private banks or bankers not incorporated shall pay a tax of five hundred dollars per annum. Every person, firm, company, or association not incorporated having a place of business where credits are opened by the deposit or collection of moneys or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a private bank or banker. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 14.)

#### § 47-1707 [20: 766]. Washington Stock Exchange.

The Washington Stock Exchange, through its president or treasurer, shall pay to the collector of

taxes of the District of Columbia a sum equal to five hundred dollars per annum in lieu of tax on the members thereof for business done on said exchange. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 15.)

#### COMPILER'S NOTE

That part of section 6, par. 15, of the 1902 act, cited to the text, which imposed a tax of \$250 per annum upon general brokers, and of \$100 per annum upon any broker who is a member of a regularly organized stock exchange outside of the District, has been omitted in view of the case cited below holding in effect that the statute, by imposing an unreasonable burden on the right of a citizen to pursue a lawful occupation open to his competitors upon less onerous terms operates substantially as the taking of property without due process of law, and was therefore within the prohibition of the 5th Amendment of the Constitution. *Lappin v. District of Columbia* (22 App. D. C. 63, 80).

#### § 47-1708 [20: 767]. Note brokers.

Note brokers shall pay a tax of one hundred dollars per annum. Every person, firm, company, or association not incorporated (except private banks and bankers) that loans money on promissory notes without real estate or collateral security or advances money on personal property as security without possession of said personal property shall be deemed a note broker: *Provided*, That exception shall be made of cooperative associations whose business is restricted to the members of such association. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 16.)

#### § 47-1709 [20: 768]. Private banks and note brokers to pay annual tax on the first day of July each year.

The taxes for said private banks and bankers, and note brokers shall be paid to the collector of taxes of the District of Columbia, and shall date from the 1st day of July in each year and expire on the 30th day of June following. Said taxes shall date from the 1st day of the month in which the liability begins, and payment shall be made for a proportionate amount. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 17.)

### Chapter 18—INSURANCE COMPANIES

#### Sec.

- 47-1801. Taxes on insurance companies.
- 47-1802. Penalty clause.
- 47-1803. Prosecutions in police court.
- 47-1804. Annual statements required—Filing fee.
- 47-1805. Revocation of license if statement not filed.
- 47-1806. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.
- 47-1807. Penalty.
- 47-1808. Exemption of nonprofit relief associations.

#### § 47-1801 [20: 966]. Taxes on insurance companies.

Every domestic, foreign, or alien company organized as a stock, mutual, reciprocal, Lloyd's, fraternal, or any other type of insurance company or association, before issuing contracts of insurance against loss of life or health, or by fire, marine, accident, casualty, fidelity and surety title guaranty, or other hazard not contrary to public policy, shall obtain from the superintendent of insurance of the District of Columbia an annual license or certificate of authority, upon payment of a fee of \$25 to the collector of taxes of the District of Columbia. All licenses for insurance companies who may apply for permission to do business in the District of Columbia



shall date from the first of the month in which application is made, and expire on the 30th day of April following, and payments shall be made in proportion. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 1.)

#### COMPILER'S NOTES

The original act contains these words before the present first word, "On and after the first day of September 1937."

This chapter superseded in whole or in part §§ 35-406 to 35-409, which relate to annual statements by life insurance companies.

This chapter partially supersedes § 35-202.

This chapter supersedes in whole or in part § 35-402 which requires life insurance companies and agents to pay certain fees.

#### CROSS REFERENCES

Fees for fraternal benefit associations, § 35-906.

Taxation of marine insurance companies, § 35-1108 et seq.

The sections in this chapter are part of the Revenue Act of 1937, see Compiler's Note to § 47-1401.

See notes to § 47-1808. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107, Fed. (2d) 239).

#### § 47-1802 [20: 966a]. Penalty clause.

Any such company issuing contracts of insurance in the District of Columbia, without first having obtained license or certificate of authority from the superintendent of insurance so to do, shall upon conviction be subject to a fine of \$100 per day for each day it shall engage in business without such license or certificate of authority. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 2.)

#### CROSS REFERENCE

See notes to § 47-1801.

#### § 47-1803 [20: 966b]. Prosecutions in police court.

All prosecutions for violations of this chapter shall be in the police court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 3.)

#### § 47-1804 [20: 966c]. Annual statements required—Filing fee.

Each of such companies shall file an annual statement, in the form prescribed by the superintendent of insurance, before March 1 of each year, of its operations for the year ending December 31 immediately preceding. Such statement shall be verified by the oath of the president and secretary or in their absence by two other principal officers. The fee for filing said statement shall be \$20 and payment therefor shall be made to the collector of taxes of the District of Columbia. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 4.)

#### COMPILER'S NOTE

This chapter supersedes, in whole or in part, §§ 35-103 to 35-105.

#### CROSS REFERENCE

Annual statement by fire, casualty, and marine insurance companies, § 35-1311.

#### § 47-1805 [20: 966d]. Revocation of license if statement not filed.

If any such company shall fail to file the annual statement herein required, the superintendent of insurance may thereupon revoke its license or cer-

tificate of authority to transact business in the District of Columbia. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 5.)

#### § 47-1806 [20: 966e]. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.

All such companies, including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title.

Net premium receipts or consideration received means gross premiums or consideration received less the sum of the following:

1. Premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

Nothing contained in this section or in sections 47-1801, 47-1807 shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of sections 35-1101 to 35-1132. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; May 16, 1938, 52 Stat. 358, ch. 223, § 2.)

#### AMENDMENT

The 1938 amendment added the words "including companies which issue annuity contracts" following the word "companies" the first time said word appears; the words "or consideration" following the word "receipts" the first time said word appears; the words "and annuity" following the word "insurance" the first time said word appears; the words "or consideration received" and "or consideration" in the second paragraph; the words "received for reinsurance assumed and premiums or consideration returned" and "or contracts" in the third paragraph (numbered (1)); and deleted the words "Premiums paid for reinsurance where the same are paid to companies duly licensed to do business in the District, and."

#### § 47-1807 [20: 966f]. Penalty.

If any such company shall fail to pay the tax herein required, it shall be liable to the District of Columbia for the amount thereof, and in addition thereof a penalty of 8 per centum per month thereafter until paid. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 7.)

#### § 47-1808 [20: 966g]. Exemption of nonprofit relief associations.

Nothing contained in this chapter shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service or solely of employees of the District



of Columbia government, or solely of employees of any individual, company, firm, or corporation or to any fraternal organization which issues contracts of insurance exclusively to its own members. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 8.)

#### NOTES TO DECISIONS

##### GROUP HEALTH ASSOCIATION

Group Health Association falls within exempting proviso of statute. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

The word "corporation" as used in the exemption obviously refers to private concerns, not governmental agencies, and Group Health is relieved from the requirements of this section. *Jordan v. Group Health Assn.* (71 App. D. C. 38, 107 Fed. (2d) 239).

#### Chapter 19.—MOTOR FUEL TAX

##### Sec.

- 47-1901. Rate—Use restricted.
- 47-1902. Definitions.
- 47-1903. Importers — License — Application for — Contents—Fee—Bond—Issuance—Revocation.
- 47-1904. To render monthly report to assessor of amount of fuel sold.
- 47-1905. Invoices to be rendered by importers to all purchasers except in cases of retail sales.
- 47-1906. Tax to be paid to collector not later than last day of next succeeding calendar month.
- 47-1907. Importer's records of transactions subject to inspection of assessor and collector.
- 47-1908. Penalty for accepting fuel from importer without an itemized sale statement.
- 47-1909. Fuel to be exported from District of Columbia exempted from taxation.
- 47-1910. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.
- 47-1911. Violations—Penalty.
- 47-1912. Tax on fuel sold by United States agency in the District of Columbia.
- 47-1913. Violations to be prosecuted by corporation counsel.
- 47-1914. Construction—Not to affect public hackers.
- 47-1915. Construction—Personal tax laws not affected.
- 47-1916. Commissioners to make necessary regulations.
- 47-1917. Street paving—Assessments.
- 47-1918. Revenue and disbursements.
- 47-1919. Continuation of uncompleted projects at end of fiscal year.

§ 47-1901 [20: 831]. Rate—Use restricted.

A tax of 2 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

All proceeds of the taxes imposed under the District of Columbia Revenue Act of 1937, except as otherwise provided in section 47-1910, and all moneys collected from fees charged for the registration and titling of motor vehicles including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the treasury of the United States entirely to the credit of the District of Columbia, and shall be appropriated and used solely and exclusively for the following purposes:

(1) For the construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and

control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total amount appropriated for pay and allowances of officers and members of the Metropolitan police force. For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances of officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 1; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 1.)

##### AMENDMENT

The 1937 amendment deleted the following sentence from the first paragraph: "The proceeds of the tax, except as provided in section 10, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair," and added the second and following paragraphs of the section.

##### CROSS REFERENCES

Disposition of taxes, § 40-103.  
Refunds, § 47-1910.

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

See § 1-224 as to the authority of the Commissioners to regulate the storage of inflammables.

#### NOTES TO DECISIONS

##### SPECIAL ASSESSMENT

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer v. Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943).

§ 47-1902 [20: 832]. Definitions.

As used in sections 47-1901—47-1916—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks.

(b) The term "motor vehicle fuels" means gasoline and other volatile and inflammable liquid fuels produced or compounded for the purpose of operating or propelling internal-combustion engines: *Provided,* That kerosene shall not be considered to be a motor-vehicle fuel in the meaning of this chapter.

(c) The term "importer" means any person who brings into, or who produces, refines, manufactures, or compounds, in the District of Columbia motor-vehicle fuel to be used by him or to be sold, kept for sale, bartered, delivered for value, or exchanged for goods. The term "distributor" means any person other than an importer, who purchases motor-vehicle fuel for sale to another person for resale.

(d) The term "person" includes individual, partnership, corporation, and association.

(e) The term "commissioners" means the Board of Commissioners of the District of Columbia.

(f) The term "highways" means the right of way of streets, avenues, and roads, bridges, viaducts, under-



passes, drainage structures, guard rails, signs, signals, curbing, and dikes, fills, and retaining walls necessary to support or protect the highway.

(g) The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway, including the acquisition of the necessary rights of way.

(h) The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof and of sufficient width and strength to care adequately for traffic needs, including all expenses incidental to the reconstruction of a highway and the acquisition of the necessary rights of way.

(i) The term "maintenance" means the constant making of needed repairs to preserve the highway.

(j) The term "improvement" means the betterment of a highway by construction, reconstruction, or resurfacing. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 2; Aug. 17, 1937, 50 Stat. 677, ch. 690, title III, § 2; May 16, 1938, 52 Stat. 358, ch. 223, § 3.)

#### AMENDMENTS

The 1937 amendment deleted from subsection (c) the words "or otherwise disposed of by him or to be used by him in a motor vehicle operated for hire or for commercial purposes" and inserted in lieu thereof the words which follow the word "sold" to the end of the subsection, and added subsections (f), (g), (h), and (i).

The 1938 amendment in subsection (f) deleted the words "and protective structures in connection with highways" and inserted in lieu thereof the words following the word "signals," and added subsection (j).

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Note to § 47-1401.

#### NOTES TO DECISIONS

##### GASOLINE IMPORTED BY UNITED STATES

United States is not an "importer" or "person" within the meaning of the act. *District of Columbia v. American Oil Co.* (59 App. D. C. 260, 39 Fed. (2d) 510).

§ 47-1903 [20: 833]. Importers — License — Application for—Contents—Fee—Bond—Issuance—Revocation.

(a) No person shall bring into, or produce, refine, manufacture, or compound in the District of Columbia motor-vehicle fuel to be used by him or to be sold, bartered, delivered for value, or exchanged for goods, and no person shall engage in the business of importer of motor-vehicle fuels in the District of Columbia unless such person is the holder of an unrevoked license authorizing him so to do issued by the commissioners. The application for such license shall contain (1) the name of the applicant; (2) the name under which the applicant intends to transact business and the name and place of business of the local representative; (3) the location of the applicant's place of business; (4) the date such business was established; and (5) any other information required under regulations promulgated by the commissioners of the District of Columbia. In case the applicant is a corporation, the application shall also contain the corporate name, place, and time of incorporation, and the names of the officers and directors, and, if a foreign corporation, the name of its resident general agent, and in case the applicant is a partnership the names and addresses of the

several persons constituting the partnership. Such application shall be signed and sworn to by the owner of such business, if owned by an individual; by the partners, if owned by a partnership; or by the president and secretary of the corporation, or by its manager or resident general agent, if owned by a corporation. At the time of applying for such license the applicant shall pay to the collector of taxes as an annual license fee the sum of \$5 and shall file with the commissioners of the District of Columbia a bond in the form to be prescribed by said commissioners, in the approximate sum of three times the average monthly motor-fuel tax due from said such importer during the next preceding twelve months, or estimated to be so due in the next succeeding twelve months, to be executed by a surety company duly licensed to do business under the laws of the District of Columbia, payable to the District of Columbia and conditioned upon the prompt payment of any and all taxes and penalties, levied and imposed in sections 47-1901 and 47-1903 to the collector of taxes of the District of Columbia, and generally upon faithful compliance with the terms of sections 47-1901 to 47-1916 by such importer: *Provided*, That in no case shall such bond be less than \$5,000 nor more than \$20,000.

(b) Upon filing such application and bond and the payment of the fee, the assessor shall issue to such applicant a license which shall authorize the applicant to engage in the business of importer of motor-vehicle fuels for one year unless such license is sooner revoked.

(c) If any importer fails, refuses, or neglects to file the monthly report within the time required by section 47-1904, or to pay the tax within the time required by section 47-1906 there shall be added to such tax an amount equal to the sum of 20 per centum of the amount of such tax, and the assessor shall promptly notify the importer and the bonding company by notice sent by registered mail to such importer requiring him to show cause why the license should not be revoked. If in the opinion of the assessor the importer fails within ten days after the mailing of such notice to show that failure to file the monthly report or to pay the tax as the case may be within the time required was due to accident or justifiable oversight, the assessor shall forthwith revoke such license. Any importer whose license has been revoked shall not be issued another license for twelve months following the date of said revocation.

(d) Before any person whose license has been revoked may obtain another license to engage in the business of importer of motor-vehicle fuels, such person shall pay all delinquent taxes and penalties due hereunder remaining unpaid by him. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 3; Aug. 17, 1937, 50 Stat. 678, ch. 690, title III, § 3.)

#### AMENDMENT

The 1937 amendment is, in effect, a new enactment superseding this section as contained in the 1924 act.

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Note to § 47-1401.



## NOTES TO DECISIONS

## SALE TO UNITED STATES

Congress did not intend to permit the United States to import gasoline, tax-free, and yet impose a tax if delivery to the United States by the vendor should be made in the District instead of across the line in Virginia. *District of Columbia v. American Oil Co.* (59 App. D. C. 260, 39 Fed. (2d) 510).

§ 47-1904 [20: 834]. To render monthly report to assessor of amount of fuel sold.

Each importer engaged in the District of Columbia in the sale or other disposition or use of motor-vehicle fuel shall render to the assessor of the District of Columbia, on or before the last day of each calendar month, on forms prescribed, prepared, and furnished by the said assessor, a sworn report of the total number of gallons of motor-vehicle fuel within the District of Columbia sold or otherwise disposed of by such importer or used by him in a motor vehicle operated for hire or for commercial purposes, and of the number of gallons of such fuel so sold or otherwise disposed of for exportation from and resale without the District of Columbia, during the preceding calendar month. Such report shall be sworn to by one of the principal officers in case of a domestic corporation, by the resident general agent, or attorney in fact, or by a chief accountant or officer in case of a foreign corporation, or by the managing agent or owner in case of a partnership or association. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 4.)

§ 47-1905 [20: 835]. Invoices to be rendered by importers to all purchasers except in cases of retail sales.

Invoices shall be rendered by importers and distributors to all purchasers from them of motor-vehicle fuel within the District of Columbia except in case of retail sales. Said invoices shall contain a statement, printed thereon in a conspicuous place, that the liability to the District of Columbia for the tax herein imposed has been assumed by a licensed importer named in said statement and that the importer has paid the tax or will pay it on or before the last day of the calendar month next succeeding the purchase. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 5; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 4.)

## AMENDMENT

The 1937 amendment inserted the words "and distributors" after "importers," and the words "by a licensed importer named in said statement" were inserted after the word "assumed."

## CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

§ 47-1906 [20: 836]. Tax to be paid to collector not later than last day of next succeeding calendar month.

The tax in respect to motor-vehicle fuel so sold or otherwise disposed of or used in any calendar month shall be paid by the importer on or before the last day of the next succeeding calendar month to the collector of taxes of the District of Columbia, who shall issue a receipt to the importer therefor. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 6.)

§ 47-1907 [20: 837]. Importer's records of transactions subject to inspection of assessor and collector.

The records of all purchases, receipts, sales, other dispositions, and uses of motor-vehicle fuel of every importer, distributor, or dealer shall, at all times during the business hours of the day, be subject to inspection by the assessor and the collector of taxes of the District of Columbia, or by their duly authorized agents or by any other agent duly authorized by the Commissioners to make such inspection. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 7; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 5.)

## AMENDMENT

The 1937 amendment added the words "distributor, or dealer."

## CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

§ 47-1908 [20: 838]. Penalty for accepting fuel from importer without an itemized sale statement.

It shall be unlawful for any person to accept or receive from any importer or distributor, except in cases of retail sales, any motor-vehicle fuel unless the statement provided for in section 47-1905 appears upon the invoice for the fuel. If any such motor-vehicle fuel is received and accepted by any person upon the invoice of which said statement does not appear, such person shall pay to the collector of taxes the tax herein imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 8; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 6.)

## AMENDMENT

The 1937 amendment added the words "or distributor" and deleted following the word "imposed" the words "or be liable to the District of Columbia for double the amount of the said tax, which amount may be recovered by civil suit or action in any court of competent jurisdiction."

## CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

§ 47-1909 [20: 839]. Fuel to be exported from District of Columbia exempted from taxation.

No tax on motor-vehicle fuels exported or sold for exportation from the District of Columbia to any other jurisdiction or nation shall be imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 9.)

§ 47-1910 [20: 840]. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.

Any person who purchases any motor-vehicle fuel in the District of Columbia to be used for operating or propelling any stationary gas engine, tractor used for agricultural purposes, motor-boat, aeroplane, or aircraft of any character, or for cleaning or dyeing, or for any other purpose other than use in a motor vehicle operated, or intended to be operated, in whole or in part upon any of the public highways of the District of Columbia, on which motor-vehicle fuel the tax imposed by sections 47-1901 to 47-1916 shall have been paid, shall be refunded the amount of such tax so paid by the importer, upon presenting to the collector of taxes of the District of Columbia a sworn statement accompanied by the invoices showing such purchase, which statement shall set forth the total



amount of such motor-vehicle fuel so purchased and used by such consumer other than in motor vehicles operated, or intended to be operated, on any of the public highways of the District of Columbia. Such refunds shall be made by check by the collector of taxes from moneys paid for taxes on motor-vehicle fuels and retained on deposit as hereinafter in this section provided. For the purpose of such refunds the collector of taxes is authorized at all times to retain in a special fund on deposit in a Government depository moneys paid him for such taxes, the total amount so retained on deposit not to exceed \$1,000 at any one time. Applications for refunds as provided herein, must be filed with the collector of taxes of the District of Columbia within sixty days from the date of purchase: *Provided*, That before any refund shall be made the applicant shall furnish to the collector of taxes of the District of Columbia satisfactory evidence by sworn statement of the exempted use of such fuel purchased by him. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 10; Aug. 11, 1939, 53 Stat. 1409, ch. 692.)

#### AMENDMENT

The 1939 amendment deleted the word "thirty" and inserted in lieu thereof the word "sixty."

#### CROSS REFERENCE

Refund of taxes, § 47-1017 and notes.

#### § 47-1911 [20: 841]. Violations—Penalty.

Any person violating any provision of sections 47-1903 to 47-1906 inclusive, or section 47-1908, or refusing or obstructing inspection under section 47-1907, or falsely making any statement or report required by sections 47-1901 to 47-1916, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 11; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 7.)

#### AMENDMENT

The 1937 amendment added the words "or section 8 (§ 47-1908)," and deleted the words "Any person who fails to pay any tax upon motor-vehicle fuels imposed by this act shall be liable to the District of Columbia for a penalty equal to twice the amount of such tax. Such penalty may be collected in a civil suit in any court of competent jurisdiction."

#### CROSS REFERENCE

This section is part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

#### § 47-1912 [20: 844]. Tax on fuel sold by United States agency in the District of Columbia.

When under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 2 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 14.)

#### § 47-1913 [20: 845]. Violations to be prosecuted by corporation counsel.

All prosecution for violations of the provisions of sections 47-1901 to 47-1906 or regulations prescribed thereunder may be in the police court of the District of Columbia, upon information filed by the corporation counsel of the District of Columbia or any of his assistants; and all suits for the collection of any tax or penalty under sections 47-1901 to 47-1906 or such regulations shall be instituted by the corporation counsel or any of his assistants. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 15.)

#### § 47-1914 [20: 846]. Construction—Not to affect public hackers.

Nothing in this chapter shall be construed in any wise to affect the provisions of sections 47-2331 to 47-2333. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 16.)

#### COMPILER'S NOTE

The paragraphs of the 1902 act referred to appeared in D. C. 1929 as sections 879, 881, and 882 of title 20. The act of July 1, 1932, 47 Stat. 550, ch. 366, purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. The 1932 act appeared in Supplement V to D. C. 1929 as chapter 10 of title 20 and appears in this code as chapter 23 of this title. Paragraphs 11, 13, and 14 of the 1902 act contain subject matter closely akin to paragraphs 31, 32, and 33 of the 1932 act, which appear in this code, as they are now amended, as §§ 47-2331 to 47-2333.

#### § 47-1915 [20: 847]. Construction—Personal tax laws not affected.

Nothing in sections 47-1901 to 47-1916 shall be construed as affecting the application to motor vehicles of the personal-property tax in force on May 3, 1924, which personal-property tax shall continue to be levied, assessed, and collected on motor vehicles. (Apr. 23, 1924, 43 Stat. 110, ch. 131, § 17.)

#### CROSS REFERENCE

Taxation of motor vehicles, § 47-1210.

#### NOTES TO DECISIONS

##### CONSTRUCTION

This act should be considered as a whole, and, if possible, given an interpretation that will harmonize and accord full force and effect to all of its provisions. *District of Columbia v. Bailey* (57 App. D. C. 151, 18 Fed. (2d) 387).

#### § 47-1916 [20: 848]. Commissioners to make necessary regulations.

The commissioners may make such regulations as in their judgment are necessary for the administration of this chapter and may affix thereto such fines and penalties as in their judgment are necessary to enforce such regulations (in cases in which a penalty is not otherwise provided by law). (Apr. 23, 1924, 43 Stat. 110, ch. 131, § 18.)

#### CROSS REFERENCE

Rules and regulations, § 47-2502 and notes.

#### § 47-1917. Street paving—Assessments.

Assessments in accordance with existing law shall be made for paving and repaving roadways, where such roadways are paved or repaved, with funds derived from the collection of the tax on motor-vehicle fuels. (Mar. 3, 1926, 44 Stat. 167, ch. 44, § 1.)



## § 47-1918 [20: 849]. Revenue and disbursements.

All moneys derived from assessments for paving and repaving roadways under provisions of existing law arising from the expenditure of the fund created by the tax on motor-vehicle fuels, shall be paid into the treasury of the United States and be credited to and constitute a part of said fund and shall thereafter be available for appropriation in the same manner as the proceeds of the tax on motor-vehicle fuels. (June 7, 1924, 43 Stat. 550, ch. 302.)

## NOTES TO DECISIONS

## PROVIDED BY EXISTING LAW

Term "provided by existing law" should be held to refer to the provision of the statute relating to the paving, and not to the assumed principle of common law relating to the relocation of the tracks. *District of Columbia v. Georgetown & T. R. Co.* (59 App. D. C. 335, 41 Fed. (2d) 424).

## § 47-1919 [20: 850]. Continuation of uncompleted projects at end of fiscal year.

Any projects or portions of projects chargeable to the gasoline-tax road and street improvement fund during the fiscal year 1925 and subsequent fiscal years and uncompleted at the close of those years shall be a continuing charge upon the fund until completed and shall, except in so far as conditions beyond the control of the commissioners prevent, be given priority over projects subsequently made a charge upon such fund. (Mar. 3, 1925, 43 Stat. 1226, ch. 477.)

## NOTES TO DECISIONS

## INVALIDITY

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer v. Hechinger* (61 App. D. C. 104, 57 Fed. (2d) 943).

## Chapter 20.—DOG TAX

## Sec.

- 47-2001. Dog tax.
- 47-2002. Collector to furnish metallic tag.
- 47-2003. Impounding of dogs found at large without tag.
- 47-2004. Dogs wearing tag permitted to run at large—Exception.
- 47-2005. Owner of dog liable to civil action for damages caused by the dog.
- 47-2006. Dogs must wear collar with owner's name and tag.
- 47-2007. Removing dog's collar, insignia, or tag—Penalty.
- 47-2008. Poundmaster given power to make arrest.

## § 47-2001 [20: 915]. Dog tax.

There shall be levied a tax of two dollars each per annum upon all dogs owned or kept in the District of Columbia; said tax to be collected as other taxes in said District are or may be collected. (June 19, 1878, 20 Stat. 173, ch. 323, § 1.)

## § 47-2002 [20: 916]. Collector to furnish metallic tag.

It shall be the duty of the collector of taxes, upon receipt of said tax, to give to the person paying the same, for each dog so paid for, a suitable metallic tag, stamped with the year, showing that said tax has been duly paid; and he shall keep a record of all such payments, with the date thereof, and the name, color, and sex of such dog, and the name of the person claiming any dog so paid for; and a copy of such record, certified under the hand and official seal of the said collector, which shall be given

to any person demanding the same, upon payment of twenty-five cents therefor, shall be prima-facie evidence of such payment in any court of the District of Columbia. (June 19, 1878, 20 Stat. 173, ch. 323, § 2.)

## § 47-2003 [20: 917]. Impounding of dogs found at large without tag.

The pound master of the District of Columbia shall, during the entire year, seize all dogs found running at large without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the poundmaster may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia. (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332.)

## CROSS REFERENCE

General provisions concerning animals running at large, § 1-230.

## NOTES TO DECISIONS

## EFFECT OF AMENDMENT

The amendment of this act without changing the particular provision that had previously been construed by the court does not modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell v. Petty* (52 App. D. C. 310, 286 Fed. 772).

## § 47-2004 [20: 918]. Dogs wearing tag permitted to run at large—Exception.

Any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (June 19, 1878, 20 Stat. 174, ch. 323, § 4; June 30, 1902, 32 Stat. 547, ch. 1332.)

## § 47-2005 [20: 919]. Owner of dog liable to civil action for damages caused by the dog.

Any person owning any dog so recorded in the collector's office shall be liable in a civil action for any damage done by said dog to the full amount of the injury inflicted. (June 19, 1878, 20 Stat. 174, ch. 323, § 5.)

## § 47-2006 [20: 920]. Dogs must wear collar with owner's name and tag.

It shall be the duty of any person owning or possessing a dog to place, or cause to be placed and kept, around the neck of such dog, a collar, on which shall be marked and engraved, in legible and durable characters, the name of the owner or possessor, and the letters "D. C.," and to which collar must be attached



the insignia or tax-tag furnished by the District tax-collector, in accordance with sections 47-2001, 47-2002, under the penalty of not less than five nor more than ten dollars; and if any person shall put, or cause to be put, a collar, with the insignia or tax-tag, around the neck of any dog owned or possessed by any person or persons residing in the District, without having obtained a license for keeping such animal, he, she, or they shall forfeit and pay the sum of not less than five nor more than ten dollars for each and every offense. (June 19, 1878, 20 Stat. 174, ch. 323, § 6.)

**§ 47-2007 [20: 921]. Removing dog's collar, insignia, or tag—Penalty.**

Any person who shall remove, or cause to be removed, the collar and insignia or tax-tag from the neck of any dog, or entice any properly licensed dog into any inclosure for the purpose of taking off its collar or insignia, or shall for such purpose decoy or entice any animal out of the inclosure or house of its owner or possessor, or shall seize or molest any dog while held or led by any person, or shall bring any dog into the District for the purpose of taking up and killing the same, shall forfeit and pay a sum of not more than twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 8.)

**§ 47-2008 [20: 921a]. Poundmaster given power to make arrest.**

In order to carry out properly and effectively the duties imposed upon him by Congress the poundmaster is hereby given authority as a special police officer of the Metropolitan police department of the District of Columbia, with authority to make arrests in the performance of his duty. (June 6, 1930, 46 Stat. 522, ch. 411, § 1.)

**COMPILER'S NOTE**

This section as enacted contained the clause, "and he shall receive a salary at the rate of \$3,080 per annum." That portion has been deleted because subsequent appropriation acts have provided a different salary.

**Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES**

**Sec.**

- 47-2101. Employment agencies—License required—Definitions.
- 47-2102. Bond.
- 47-2103. Registers.
- 47-2104. Receipts.
- 47-2105. Location of place in which conducted.
- 47-2106. Application of minor.
- 47-2107. Inspection.
- 47-2108. False information.
- 47-2109. Exceptions from license requirements.
- 47-2110. Employment contract.
- 47-2111. Character of employer—Fraud.

**§ 47-2101 [20: 1742]. Employment agencies — License required—Definitions.**

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be \$100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners: *Provided*, That any person whose license shall be denied, revoked, or suspended by the commissioners may, within thirty days after such

denial, revocation, or suspension, apply to any justice of the United States Court of Appeals for the District of Columbia for a writ of error to review such action. Such application shall not operate as a stay of any order issued in connection with such denial, revocation, or suspension.

(a) The term "private employment agency" means any business, enterprise, or undertaking that procures, offers to procure, promises to procure, attempts to procure, or aids in procuring, either directly or indirectly, help or employment for another, for any fee, remuneration, profit, or any consideration whatsoever, promises, paid, or received therefor, either directly or indirectly. It shall also include domestic, commercial, clerical, executive, professional, and general employment bureaus, and shall apply to theatrical employment agencies and nurses' registry conducted for profit or gain.

(a-1) The term "nurses' registry" means and includes the business of conducting an agency, bureau, office, or other place for the purpose of procuring, offering to procure, promising to procure, attempting to procure, or aiding in procuring employment or engagements for nurses of any kind.

(a-2) The term "theatrical employment agency" includes the business of conducting any agency, bureau, office, or other place providing engagements for circus, vaudeville, theatrical, and other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided, but does not include the business of managing the artists or the attraction constituting such performances, where such business only incidentally involves the seeking of employment therefor.

(a-3) The term "applicant for employment" means any person seeking work, employment, or engagement of any character.

(a-4) The term "applicant for help" means any person seeking help, employees, or performers.

The singular shall include the plural and the masculine the feminine. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 42; July 1, 1932, 47 Stat. 559, ch. 366, par. 42.)

**COMPILER'S NOTE**

This chapter sets out that part of the 1932 License Law that deals with employment agencies. Penalties for violating §§ 47-2101 to 47-2109 are set out by § 47-2347.

**AMENDMENT**

Prior to amendment by the 1932 act, this paragraph provided as follows: "Proprietors or owners of intelligence offices, information bureaus, registries, or employment offices, by whatsoever name called, shall pay a license tax of ten dollars per annum."

**CROSS REFERENCES**

- Exceptions from act, § 47-2109.
- Refund of fees when license is refused, § 47-1018.
- Revocation or suspension of license for violation of Uniform Narcotic Drug Act, § 33-418.
- Commission may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

This chapter is not affected by provisions for licensing of motor vehicles, § 40-105.

See Compiler's Note to § 47-1201.

**§ 47-2102 [20: 1743]. Bond.**

No license shall become effective under section 47-2101 until bond in due form in the penal sum of



\$1,000, or such lesser amount as the commissioners may determine with two or more sureties or a duly authorized surety company to be approved by the commissioners, shall have been deposited with the commissioners. The bond shall be payable to the District of Columbia and shall be conditioned that the person applying for the license will comply with this chapter and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud, or deceit, or any unlawful act or omission of any licensed person, made, committed, or omitted in the business conducted under such license, or caused by any other violation of this chapter in carrying on the business for which such license is granted. One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect: *Provided, however,* That the aggregate amount of all such recoveries shall not exceed the full amount of the bond. Upon the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the commissioners may require a new and additional bond in like amount as the original one which shall be filed with the commissioners within thirty days of the demand therefor. Failure to file such bond within the prescribed time shall constitute cause for the revocation of the license therefor issued. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year from the accruing of the cause of action thereon.

If at any time, in the opinion of the commissioners, the sureties, or any of them, shall become irresponsible, the person holding such license shall, upon notice from the commissioners, give a new bond, and the failure to give a new bond within ten days after such notice, in the discretion of the commissioners, shall operate as a revocation of such license.

The commissioners shall furnish to anyone applying therefor a certified copy of any such bond filed in their office upon the payment of a fee of \$1, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person or corporation whose name appears therein. (July 1, 1902, ch. 1352, § 7, par. 42b, as added July 1, 1932, 47 Stat. 560, ch. 366.)

#### § 47-2103 [20: 1744]. Registers.

It shall be the duty of every licensee to keep a register, approved by the commissioners, in which shall be entered, in the English language, the date of the application for employment, the name and address of the applicant to whom employment is promised or offered, the amount of the fee received, and, whenever possible, the names and addresses of former employers or persons to whom such applicant is known. Such licensee shall also enter in a separate register, approved by the commissioners, in the English language, the name and address of every applicant accepted for help, the date of such application, kind of help requested, the names of the persons sent, with the designation of the one em-

ployed, and the amount of the fee received. The aforesaid registers of applicants for employment and help shall be open during office hours to inspection by the said commissioners. No such licensee shall make any false entry in such registers. It shall be the duty of every licensee, whenever possible, to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency: *Provided,* That if the applicant for help voluntarily waives in writing such investigation of references by the licensee, failure on the part of the licensee to make such investigation shall not be deemed a violation of this section. (July 1, 1902, ch. 1352, § 7, par. 42c, as added July 1, 1932, 47 Stat. 561, ch. 366.)

#### § 47-2104 [20: 1745]. Receipts.

It shall be the duty of such licensee to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name of said applicant, the date and amount of the fee, and the purpose for which it was paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every receipt given by such licensee shall bear the name and address of such licensee printed in large type thereon. Every receipt shall have printed on the back thereof a copy of § 47-2108 in the English language. (July 1, 1902, ch. 1352, § 7, par. 42d, as added July 1, 1932, 47 Stat. 561, ch. 366.)

#### § 47-2105 [20: 1746]. Location of place in which conducted.

No private employment agency licensed under section 47-2101 shall be located in rooms used for living purposes, or in rooms where boarders or lodgers are kept, or where meals are served or persons sleep, or in any building or on premises wherein rooms are located and used for living purposes, or wherein boarders or lodgers are kept, or where meals are served, or persons sleep, or in any building wherein such rooms are located; nor shall any such private employment agency be located in any such building where the entrance thereto is not separate and apart from the entrance to the building proper, or where there is any entrance into the building proper from said private employment agency: *Provided,* That no one shall be precluded from keeping an employment agency in an office building by reason of there being a cafe or restaurant in another part of said building. (July 1, 1902, ch. 1352, § 7, par. 42e, as added July 1, 1932, 47 Stat. 561, ch. 366.)

#### § 47-2106 [20: 1747]. Application of minor.

No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of any compulsory education or child labor laws. (July 1, 1902, ch. 1352, § 7, par. 42f, as added July 1, 1932, 47 Stat. 561, ch. 366.)



**§ 47-2107 [20: 1748]. Inspection.**

All registers, books, records, and other papers required to be kept pursuant to this chapter in any private employment agency shall be open at all reasonable hours to the inspection of the commissioners, and every licensee shall post in a conspicuous place in such agency the license certificate. (July 1, 1902, ch. 1352, § 7, par. 42g, as added July 1, 1932, 47 Stat. 562, ch. 366.)

**CROSS REFERENCE**

See notes to § 47-2101.

**§ 47-2108 [20: 1749]. False information.**

No licensee conducting any private employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice, or advertisement, nor shall he give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for an engagement or employment or help. (July 1, 1902, ch. 1352, § 7, par. 42h, as added July 1, 1932, 47 Stat. 562, ch. 366.)

**§ 47-2109 [20: 1750]. Exceptions from license requirements.**

This chapter shall not apply to employment bureaus conducted by registered medical institutions, duly incorporated hospitals, or duly incorporated alumni associations of registered nurses, or to any bureau maintained by persons for the purpose of securing help or employees where no fee is charged. (July 1, 1902, ch. 1352, § 7, par. 42i, as added July 1, 1932, 47 Stat. 562, ch. 366.)

**§ 47-2110 [20: 949]. Employment contract.**

No such person shall induce or attempt to induce any domestic employee to leave his employment with a view to obtaining other employment through such agency. Whenever any licensed person, or any other acting for him, agrees to send one or more persons, to work as contract laborers in any one place outside the city in which such agency is located, the said licensed person shall give to the applicant for employment, in writing, the name and address of the employer, name and address of the employee, nature of the work to be performed, wages offered, destination of the person employed, and terms of transportation. (June 19, 1906, 34 Stat. 308, ch. 3438, § 9.)

**COMPILER'S NOTE**

This is a section of the prior law which was deemed not to be in conflict with the foregoing sections of this chapter and hence not repealed.

**§ 47-2111 [20: 950]. Character of employer—Fraud.**

No such licensed person shall send, or cause to be sent, any female as a servant or inmate or performer to enter any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No such licensed person shall knowingly permit any person of bad character, prostitutes,

gamblers, intoxicated persons, or procurers, to frequent such agency. No such person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises, whether or not dues or a fee or privilege is exacted, charged, or received directly or indirectly: *Provided*, That it shall be unlawful for employment agents or agencies to send applicants for employment to employers other than those who have applied to such agents or agencies for help or labor. For the violation of any of the foregoing provisions of this section the penalty shall be a fine of not more than two hundred dollars and in default in payment thereof by imprisonment in the workhouse for a period of not more than one year, or both, at the discretion of the court. No such licensed person shall publish or cause to be published any false or fraudulent or misleading notice or advertisement. All advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letter heads, receipts, and blanks shall contain the name and address of such employment agency, and no such licensed person shall give any false information, or make any false promise or false representation concerning employment to any applicant who shall register for employment or help. (June 19, 1906, 34 Stat. 308, ch. 3438, § 10.)

**CROSS REFERENCE**

The Compiler's Note under § 47-2210 applies to this section.

**Chapter 22.—PUBLIC AUCTION PERMITS****Sec.**

- 47-2201. Public auction—Auction of merchandise without permit from Commissioners prohibited.
- 47-2202. Application for permit—Fee—Information to be furnished.
- 47-2203. Personal effects, furniture, personal livestock, may be sold without permit.
- 47-2204. Suspension of licensee for violations.
- 47-2205. Auction of jewelry, plated wares, prohibited after certain hour.
- 47-2206. Misrepresenting merchandise—Prosecution for.
- 47-2207. Prosecution for violation to be in police court.
- 47-2208. Construction.

**§ 47-2201 [20: 869]. Public auction—Auction of merchandise without permit from Commissioners prohibited.**

Excepting sales made under authority of law, it shall be unlawful in the District of Columbia for any person, firm, or corporation, either for himself or itself, or for another, or for any firm, or corporation to sell or offer at public auction any stock or stocks of merchandise, in whole or in part, without first obtaining from the board of commissioners of the District of Columbia a written or printed permit so to do; and the said board of commissioners shall not issue a permit for any such sale or sales until they are satisfied that neither fraud nor deception of any kind is contemplated or will be practiced, and that neither the sale, the reasons therefor nor the goods to be sold have not already been or will not thereafter be fraudulently or falsely advertised or in any wise whatsoever misrepresented. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 1.)



## COMPILER'S NOTE

Sections 47-2201 to 47-2208 were saved from repeal by the act of July 1, 1932, ch. 366, par. 9, 47 Stat. 552, (§ 47-2309).

## CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, §§ 47-2344, 47-2345.

Jewelry auctioneers, § 47-2205.

Other provisions for licensing and supervising auctioneers, § 47-2309.

The commissioners may license, regulate, or inspect any business or calling, §§ 47-2344, 47-2345.

See Compiler's Note to § 47-1201.

**§ 47-2202 [20: 870]. Application for permit—Fee—Information to be furnished.**

Every such permit shall be issued for a definite period of time not exceeding twelve months from its date of issue, and the date and hour of its expiration shall be stated in the permit, and before such permit shall be issued the applicant therefor shall pay to the District of Columbia, through its collector of taxes, such fee as the said Board of Commissioners may deem sufficient to reimburse the District of Columbia for the work and expense of issuing the permit and gathering information concerning the applicant and his goods as the said board may deem prudent and best for the protection of the public, but which fee shall not exceed the sum of \$50. The application for the said permit shall be by verified petition, stating the name of the applicant, residence, street, and number of the proposed place of selling, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised as to the same, and the length of time for which the permit is desired; and, if previously engaged in a like or similar business, to designate all the places where the same was conducted, and shall furnish to said commissioners such further evidence as shall be deemed necessary to establish the truth of the statements made in the said petition. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 2.)

## CROSS REFERENCE

Refund of fees when license refused, § 47-1018.

**§ 47-2203 [20: 871]. Personal effects, furniture, personal livestock may be sold without permit.**

No permit as herein provided for shall be required for the sale of any wagon, carriage, automobile, mechanics' tools, used farming implements, livestock, including game, poultry (dressed or undressed), vegetables, fruits, melons, berries, flowers, or for the sale of used household furniture and effects when being sold at the residence of the housekeeper selling them. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 3.)

**§ 47-2204 [20: 872]. Suspension of licensee for violations.**

The Board of Commissioners of the District of Columbia are hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever they may believe that this chapter, or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and they shall thereupon forthwith institute the appropriate proceeding in the police court in

accordance with this chapter, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 4.)

**§ 47-2205 [20: 873]. Auction of jewelry, plated wares, prohibited after certain hour.**

No person as herein provided for shall sell at public auction, from the 1st day of April until the 30th day of September, both inclusive, between the hours of seven o'clock in the evening and eight o'clock the following morning, nor from the 1st day of October until the 30th day of March, both inclusive, between the hours of six o'clock in the evening and eight o'clock in the morning, any jewelry, diamond, or other precious stone, watch, gold and silver ware, gold and silver plated ware, statuary, porcelain, bric-a-brac, or articles of vertu. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 5.)

## CROSS REFERENCE

Commissioners have general police supervision, § 4-147.

**§ 47-2206 [20: 874]. Misrepresenting merchandise—Prosecution for.**

Any person selling or offering for sale any property under the provisions of this chapter shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the police court, as hereinbefore set forth. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 6.)

**§ 47-2207 [20: 875]. Prosecution for violation to be in police court.**

All prosecutions under this chapter shall be in the police court of the District of Columbia upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$200 or imprisonment of not more than sixty days or both, in the discretion of the court. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7.)

**§ 47-2208 [20: 876]. Construction.**

Nothing in this chapter shall be construed to excuse or release any person, firm or corporation, or property from the payment of any occupational or property tax, or any other tax imposed or levied by law. Neither shall anything herein be construed to obviate the application of any fraudulent or false advertisement statute of the District of Columbia to any person who may violate the same; nor shall anything herein be construed to prevent any prosecution for fraud, deceit, or larceny by trick; nor to in any way estop or hinder any remedy at law or in equity, or the right to cancel or estop any unconscionable bargain or fraudulent transaction. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 8.)



## Chapter 23.—GENERAL LICENSE LAW

Sec.

- 47-2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.
- 47-2302. Compliance with fire escape laws and regulations required before license is issued.
- 47-2303. Theater licenses—Revocation for failure to comply with regulations for decency.
- 47-2304. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.
- 47-2305. Date and expiration of license—Prorating for late application.
- 47-2306. Licenses to be posted on premises—Exhibition to police.
- 47-2307. Construction and definition of terms.
- 47-2308. Druggists, apothecaries, and patent-medicine sellers.
- 47-2309. Auctioneers—Penalty for failure to account.
- 47-2310. Barber shops and beauty parlors.
- 47-2311. Massage establishments—Turkish, Russian, or medicated baths.
- 47-2312. Public baths.
- 47-2313. Keeping or storing of moving-picture films.
- 47-2314. Gasoline, kerosene, oils, and explosives.
- 47-2315. Pyroxylin.
- 47-2316. Abattoirs or slaughterhouses.
- 47-2317. Laundries—Dry cleaning and dyeing establishments.
- 47-2318. Mattresses—Manufacture or renovation.
- 47-2319. Slot machines.
- 47-2320. Theaters—Moving pictures—Skating rinks, dances, exhibitions, lectures, entertainments.
- 47-2321. Bowling alleys—Billiard and pool tables—Games.
- 47-2322. Shooting galleries.
- 47-2323. Baseball—Football—Athletic exhibitions—Amusement parks.
- 47-2324. Swimming pools.
- 47-2325. Circuses.
- 47-2326. Carnivals and fairs.
- 47-2327. Commission merchants in food—Bakeries—Bottling establishments—Groceries—Markets—Restaurants.
- 47-2328. Hotels.
- 47-2329. Apartment houses.
- 47-2330. Lodging houses.
- 47-2331. Routed passenger vehicles, vehicles for hire—Hackers' licenses—Identification tags on vehicles.
- 47-2332. Rental or leasing of motor vehicle without driver.
- 47-2333. Vehicles hauling goods from public space.
- 47-2334. Repairing of motor vehicles.
- 47-2335. Livery stables.
- 47-2336. Sales on streets or public places.
- 47-2337. Solicitors.
- 47-2338. Guides.
- 47-2339. Secondhand dealers.
- 47-2340. Dealers in dangerous weapons.
- 47-2341. Private detectives.
- 47-2342. Fortune telling.
- 47-2343. Exposing persons or animals as targets prohibited.
- 47-2344. Commissioners may regulate, modify, or eliminate license requirements.
- 47-2345. Promulgation of regulations authorized—Revocation of licenses.
- 47-2346. Prosecutions.
- 47-2347. Penalties.
- 47-2348. Saving clause.
- 47-2349. Severable provisions.
- 47-2350. Refund of erroneously-paid fees.

§ 47-2301 [20: 1701]. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

No person shall engage in or carry on any business, trade, profession, or calling in the District of

Columbia for which a license fee or tax is imposed by the terms of this chapter without having first obtained a license so to do. Applications for licenses shall be made to the commissioners of the District of Columbia or their designated agent, and no license shall be granted until payment for the same shall have been made. Every license shall specify by name the person, firm, or corporation to which it shall be issued, the business, trade, profession, or calling for which it is granted, and the location at which such business, trade, profession, or calling is to be carried on. Licenses granted under the terms of this chapter may be assigned or transferred on application upon the conditions applicable to granting the original licenses, and the commissioners of the District of Columbia or their designated agent shall issue a certificate of such assignment or transfer upon the payment to the District of Columbia of a fee of \$1 therefor. All licenses and transfers issued or granted shall be signed by the commissioners of the District of Columbia or their designated agent and impressed with a seal to be adopted by the commissioners of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7, par. 1; July 1, 1932, 47 Stat. 550, ch. 366.)

## COMPILER'S NOTE

The enacting clause of the act cited to the text provided: "That section 7 of an act entitled 'An Act making appropriations to provide for the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes,' approved July 1, 1902, be, and the same is hereby, amended to read as follows:"

The second paragraph of that act reads: "Applications for licenses shall be made to the Commissioners of the District of Columbia or their designated agent in accordance with the provisions of the act of Congress, approved March 3, 1917, and no license shall be granted until payment for the same shall have been made."

The act of March 3, 1917 (39 Stat. 1006, ch. 160), to which reference was made was as follows: "All the authority, duties, discretion, and powers now vested by law in the assessor of the District of Columbia with respect to licenses and the issuance thereof, shall, on and after July first, nineteen hundred and seventeen, be transferred to and vest in the superintendent of licenses provided for in this act."

The superintendent of licenses was provided for in the act by merely appropriating one year's salary for the office.

The provision of the act of 1932 that application for licenses shall be made to and granted by "the Commissioners of the District of Columbia, or their designated agent" renders superfluous the following language in this section: "in accordance with the provisions of the Act of Congress, approved March 3, 1917," and the same was accordingly eliminated.

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect it is a new enactment superseding § 7 of the prior act. (See also compiler's note hereto.)

## CROSS REFERENCES

Police powers generally, § 1-226. and notes.

Power of Commissioners over licenses, §§ 47-2344, 47-2345.

Refund of fees when license refused, § 47-2350.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, § 33-418.

This chapter is not affected by provisions for licensing of motor vehicles, § 40-105.

See Compiler's Notes to § 47-1201.



§ 47-2302 [20: 1702]. Compliance with fire escape laws and regulations required before license is issued.

No license shall be issued to any person to conduct any business for which a license is required in any building mentioned in sections 5-301 to 5-312, until such building has been provided and equipped with a sufficient number of fire escapes and other appliances required by said sections; and no license shall be issued under the provisions of this chapter relating to hotels, apartment houses, lodging houses, theaters, public halls, public amusement parks, or buildings in which moving pictures are displayed for profit or gain, until the inspector of buildings, the chief officer of the fire department, and the electrical engineer have certified in writing to the commissioners of the District of Columbia or their designated agent that the applicant for license has complied with the laws enacted and the regulations made and promulgated for the protection of life and property. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 550, ch. 366, par. 2.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also compiler's note to § 47-2301.)

#### CROSS REFERENCES

Inspection fees for business required to have annual license, § 5-317.

Withholding licenses for failure to comply with safety regulations for buildings, § 5-308.

§ 47-2303 [20: 1703]. Theater licenses—Revocation for failure to comply with regulations for decency.

Any license issued by the commissioners of the District of Columbia or their designated agent to the proprietor of a theater or other public place of amusement may be terminated by the commissioners whenever it shall appear to them that after due notice the person holding such license shall have failed to comply with such regulations as may be prescribed by the commissioners for the public decency. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 3.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2304 [20: 1704]. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.

When more than one business, trade, profession, or calling for which a license is prescribed in this chapter shall be carried on by the same person, the license fee or tax shall be paid for each such business, trade, profession, or calling, except where otherwise specifically provided in this chapter: *Provided*, That licenses issued under any of the provisions of this chapter shall be good only for the location designated thereon, except in the case of licenses issued under this chapter for businesses and callings which in their nature are carried on at large and not at a fixed place of business, and no license shall be issued for more than one place of business, profession, or calling, without the payment of a separate fee or tax for

each: *Provided further*, That no person holding a license under the terms of this chapter shall wilfully suffer or allow any other person chargeable with a separate license to operate under his license. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 4.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2305 [20: 1705]. Date and expiration of license—Prorating for late application.

All licenses issued shall date from the 1st day of November in each year and expire on the 31st day of October following, except as hereinafter provided. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: *Provided*, That where the license fee is \$5 or less the fee shall not be prorated: *And provided further*, That no fee or tax shall be prorated to an amount less than \$5. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 5.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

Theater license, § 47-2320.

§ 47-2306 [20: 1706]. Licenses to be posted on premises—Exhibition to police.

All licenses granted under the terms of this chapter must be conspicuously posted on the premises of the licensee and said licenses shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspections. Licensees having no located place of business shall exhibit their licenses when requested to do so by any of the officers above named. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 6.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2307 [20: 1707]. Construction and definition of terms.

For the purposes of this chapter the word "person" shall signify and include firms, corporations, companies, associations, executives, administrators, guardians, or trustees; the word "agent" shall signify and include every person acting for another; the word "merchandise" shall signify and include every article of commerce whether sold in bulk or otherwise; the word "dealers" shall signify and include every person engaged in selling or offering for sale any description of merchandise or property. Words of one number shall signify and include words of both numbers, respectively, and words of one gender shall signify and include words of every gender, respectively: *Provided*, That nothing



in this chapter shall be interpreted as repealing any specific Act of Congress or any of the police or building regulations of the District of Columbia regarding the establishment or conduct of the businesses, trades, professions, or callings named in this chapter, and not inconsistent with the provisions of this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 7.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2308 [20: 1708]. Druggists, apothecaries, and patent-medicine sellers.

Apothecaries or druggists shall pay a license fee of \$12 per annum. Every person who sells patent medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 551, ch. 366, par. 8.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCES

Board of pharmacy, powers and duties, § 2-601 et seq.  
Uniform Narcotic Drug Act, § 33-418.

§ 47-2309 [20: 1709]. Auctioneers—Penalty for failure to account.

Auctioneers shall pay a license fee of \$5 per annum. No license shall issue hereunder without the approval of the major and superintendent of police. If any licensed auctioneer, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the police court of the District of Columbia shall be fined not more than \$1,000 or be imprisoned not exceeding six months, or both, in the discretion of the court. Nothing herein contained shall be construed to repeal or alter the provisions of §§ 47-2201 to 47-2208. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 9.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCES

Embezzlement, penalties, § 22-1206 et seq.  
Other provisions for licensing and regulating auctioneers, §§ 47-2201 to 47-2208.  
Police supervision of auctioneers of watches and jewelry, § 4-147.  
Similar provisions, § 22-1208.

§ 47-2310 [20: 1710]. Barber shops and beauty parlors.

Owners or managers of barber shops, beauty parlors, beauty salons, vanity shops, or shingle shops, by whatsoever name called, where hair cutting, hair-dressing, hair dyeing, manicuring, and kindred acts are practiced shall pay a license fee of \$5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 10.)

#### COMPILER'S NOTE

This section has probably been superseded by the creation of the Barber Board, §§ 2-1101 to 2-1118; and the Cosmetology Board, §§ 2-1301 to 2-1328.

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2311 [20: 1711]. Massage establishments—Turkish, Russian, or medicated baths.

Owners or managers of massage establishments and Turkish, Russian, or medicated baths shall pay a license fee of \$5 per annum. No license shall be issued under this section without the approval of the major and superintendent of police. It shall be unlawful for any female to give or administer massage treatment or any bath to any person of the male sex, or for any person of the male sex to give or administer massage treatment or any bath to any person of the female sex, in any establishment licensed under this section. Any person violating the provisions of this section shall, upon conviction, be punished as hereinafter provided in this chapter; and, in addition to such penalty, it shall be the duty of the Commissioners of the District of Columbia to revoke the license of the owner or manager of the establishment wherein the provisions of this section shall have been violated. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 11.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2312 [20: 1712]. Public baths.

Owners or managers of establishments where public baths are supplied to transients shall pay a license fee of \$5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 12.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2313 [20: 1713]. Keeping or storing of moving-picture films.

Owners or managers of establishments where moving-picture films are kept or stored shall pay a license fee of \$65 per annum. No license shall be issued hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 13.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)



## CROSS REFERENCE

Power of Commissioners to make police regulations to regulate the storage of highly inflammable substances and to prohibit use of fireworks or explosives, §§ 1-224, 1-227.

## § 47-2314 [20: 1714]. Gasoline, kerosene, oils, and explosives.

(a) Owners or managers of establishments where gasoline or oils of like grade are sold shall pay a license fee of \$3 per annum for each pump used in dispensing said gasoline or oils.

(b) Owners or managers of establishments where kerosene or oils of like grade are stored or are kept for sale shall pay a license fee of \$5 per annum.

(c) Owners or managers of establishments where explosives of any kind are stored or are kept for sale shall pay a license fee of \$5 per annum.

(d) No license shall be issued under this section without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 14.)

## AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

See note to § 47-2313.

## § 47-2315 [20: 1715]. Pyroxylin.

Owners or managers of establishments where pyroxylin is kept or stored for painting or spraying shall pay a license fee of \$5 per annum. No license shall issue hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 552, ch. 366, par. 15.)

## AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

See notes to § 47-2313.

## § 47-2316 [20: 1716]. Abattoirs or slaughterhouses.

Owners or proprietors of abattoirs or slaughterhouses, by whatsoever name called, shall pay a license fee of \$100 per annum. No license shall issue hereunder except with the approval of the health officer of the District of Columbia and a compliance with existing laws concerning location. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 16.)

## AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2317 [20: 1717]. Laundries—Dry cleaning and dyeing establishments.

(a) Owners or managers of laundries operated other than by hand power shall pay a license fee of \$18 per annum.

(b) Owners or managers of laundries operated by hand power shall pay a license fee of \$5 per annum.

(c) Owners or managers of dry cleaning or dyeing establishments shall pay a license fee of \$5 per

annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 17.)

## AMENDMENT

The 1932 act purports to amend the 1901 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2318 [20: 1718]. Mattresses—Manufacture or renovation.

(a) Persons engaged in the business of manufacturing or renovating mattresses shall pay a license fee of \$75 per annum.

(b) Owners or managers of establishments where mattresses are stored, sold, or kept for sale, shall pay a license fee of \$10 per annum.

(c) Within the meaning of this section, "mattress" shall be deemed to include "any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes." (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 18.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

General provisions governing manufacture, renovation, and sale of mattresses, §§ 6-601 to 6-608.

## § 47-2319 [20: 1719]. Slot machines.

Proprietors of slot weighing machines, or slot machines used for dispensing foodstuffs or refreshments of any kind, shall pay a license fee of \$2 per annum for each such machine. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 19.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

Other provision for regulation and supervision of slot machines, § 10-109.

## § 47-2320 [20: 1720]. Theaters—Moving pictures—Skating rinks, dances, exhibitions, lectures, entertainments.

(a) Owners or managers of theaters having a stage and movable scenery, used for the purpose of acting, performing, or playing in any play, farce, interlude, opera, or other theatrical or dramatic performance, or any scene, section, or portion of any play, farce, burlesque, or drama of any description, for profit or gain, shall pay a license fee of \$50 per annum.

(b) Owners or managers of theaters in which moving pictures are displayed, for profit or gain, shall pay a license fee of \$30 per annum.

(c) Owners or managers of buildings in which skating rinks, fairs, carnivals, balls, dances, exhibitions, lectures, or entertainments of any description are conducted, for profit or gain, shall pay a license fee of \$8 per annum: *Provided*, That for entertainments, concerts, or performances of any kind where the proceeds are intended for church or chari-



table purposes, and where no rental is charged, no license shall be required. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 20.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

Revocation for public indecency, § 47-2303.

### § 47-2321 [20: 1721]. Bowling alleys—Billiard and pool tables—Games.

Owners or managers of establishments where bowling alleys, billiard or pool tables, or any table, alley, or board upon which legitimate games are played, shall, when they are operated or conducted for public use, or for profit or gain, pay a license tax of \$12 per annum for each such alley, board, or table. No license shall issue under this section without the approval of the major and superintendent of police: *Provided*, That in case of refusal of said major and superintendent to approve said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the commissioners of the District of Columbia, whose decision shall be final. All establishments licensed under this section shall be closed during the entire twenty-four hours of each and every Sunday and between the hours of one o'clock antemeridian and eight o'clock antemeridian on the secular days of the week:

*Provided, however*, That bowling-alley establishments licensed under this section shall be closed at midnight on Saturday night and shall remain closed until 2 o'clock postmeridian. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 553, ch. 366, par. 21; Apr. 14, 1937, 50 Stat. 63, ch. 77.)

#### COMPILER'S NOTE

Some portions of D. C. 1929, title 20, §§ 907-910, may still be in effect. For this reason they are set out herein as notes. They read as follows:

"907. *Billiard, pool, bagatelle tables, etc.*—It shall be unlawful for any person or persons to keep any billiard table, bagatelle table, shuffleboard, jenny-lind table, pool table, or any table upon which legitimate games are played, in any saloon, room, or place of business within the District of Columbia for public use or for profit or gain, without a license therefor first had and obtained from the superintendent of licenses of the District of Columbia. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 1.)"

"908. *Same; date of license.*—Every person taking out such license shall pay to the collector of taxes of said District a license fee of twelve dollars per annum for each table. Said license may be granted or refused in the discretion of the superintendent of licenses of said District, and all licenses so granted shall date from the first day of the month in which the liability began and expire on the thirty-first day of October in each year: *Provided*, That in all cases of refusal of said superintendent of licenses to grant said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the Commissioners of the District of Columbia, whose decision shall be final. Proprietors of bowling alleys in the District of Columbia shall pay to the collector of taxes of said District an annual license tax of twelve dollars for each alley. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 2; July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 45; Apr. 28, 1904, 33 Stat. 565, ch. 1815.)"

"909. *Same; penalty for failure to procure license.*—Every person who shall own, keep, or use any billiard table, bagatelle table, pool table, or any table or board of the kind mentioned in section 907 of this title, for public use or profit without such license first had and obtained, shall, on conviction in the police court, be fined twenty dollars or imprisoned not exceeding three months for each offense, or both, in the discretion of the court. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 3.)"

"910. *Same; to be closed twenty-four hours every Sunday.*—It shall not be lawful for the proprietors of billiard tables, pool tables, bagatelle tables, jenny lind tables, or other tables of the kind mentioned in section 907 of this title, shuffleboards and bowling alleys, kept for public hire and gain in the District of Columbia to sell or to allow to be sold in the same room, spirituous, vinous, or malt liquors, and all such places shall be closed during the entire twenty-four hours of each and every Sunday, and also between twelve o'clock midnight and four o'clock in the morning. And it shall be unlawful for the proprietor or proprietors of any billiard or pool room or billiard or pool table operated in connection with a bar-room or other place where intoxicating liquors are sold to suffer or permit any minor under eighteen years of age to frequent, visit, or patronize the same.

"Any person violating the provisions of this section shall, on conviction, be punished by a fine of not less than five nor more than forty dollars, and shall in addition forfeit his or her license, in the discretion of the Commissioners of the District of Columbia. (Mar. 3, 1893, 27 Stat. 565, ch. 204, § 6; Feb. 25, 1897, 29 Stat. 595, ch. 315, § 4; May 22, 1902, 32 Stat. 202, ch. 819.)"

#### AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

The 1937 amendment added the second proviso.

### § 47-2322 [20: 1722]. Shooting galleries.

Owners or managers of shooting galleries shall pay a license fee of ten dollars per annum. No shooting gallery shall be licensed until the inspector of buildings for the District of Columbia shall furnish a certificate that suitable precautions have been taken for the public safety by the erection of suitable shields and such appliances as, in his judgment, may be necessary. Before such license shall be issued the proprietor shall furnish to the commissioners of the District of Columbia or their designated agent the written consent of a majority of the occupants and residents on the same side of the square or block in which the proposed gallery is to be located and also on the confronting side of the square fronting opposite to the same. The major and superintendent of police is hereby authorized to prescribe the caliber of firearms and kind of cartridges to be used in such licensed places. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 22.)

#### AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

### § 47-2323 [20: 1723]. Baseball—Football—Athletic exhibitions—Amusement parks.

(a) Owners or managers of grounds used for baseball, football, or other athletic exhibitions to which an admission fee is charged, directly or indirectly, shall pay a license fee of \$5 per annum.

(b) Owners or managers of grounds used for amusement parks, to which an admission is charged, directly or indirectly, other than those used for ath-



letic exhibitions, shall pay a license fee of \$65 per annum. Annual licenses issued under this section shall date from April 1 in each year. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 23.)

## AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2324 [20: 1724]. Swimming pools.

Owners or managers of swimming pools, indoor or outdoor, shall pay a license fee of \$15 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 24.)

## AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2325 [20: 1725]. Circuses.

Proprietors or owners of any circus transported by railroad into the District of Columbia shall pay a license fee of \$3 per day for each carload of circus equipment, and proprietors or owners of any circus transported by wagons or motor trucks into the District of Columbia shall pay a license tax of \$2 per day for each motor-truck load or wagon load of circus equipment, but not to exceed \$250 per day. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 25.)

## AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also, Compiler's Note to § 47-2301.)

## § 47-2326 [20: 1726]. Carnivals and fairs.

Owners or managers of carnivals or fairs, by whatsoever name called, conducted for profit or gain, and not held in any building or structure licensed under this chapter, shall pay a license fee of \$35 per day. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 26.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2327 [20: 1727]. Commission merchants in food—Bakeries—Bottling establishments—Groceries—Markets—Restaurants.

(a) Commission merchants dealing in food or food products shall pay a license fee of \$5 per annum.

(b) Owners or managers of bakeries, bottling establishments, candy-manufacturing establishments, grocery stores, ice-cream manufacturing establishments, meat shops, and market stands handling food or food products shall pay a license fee of \$5 per annum: *Provided*, That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, no additional fee shall be required.

(c) Owners or managers of delicatessens, ice-cream parlors, restaurants, soda fountains, or soft-drink establishments shall pay a license fee of \$15 per annum: *Provided*, That if any licensee hereunder shall conduct upon the same premises more than

one of the callings herein listed, or listed in paragraph (b) of this section, no additional fee shall be required. Within the meaning of paragraph (c) of this section a restaurant shall be any place where food or refreshments are served to transient customers to be eaten on the premises where sold.

(d) Wholesale dealers in fish or other marine products shall pay a license fee of \$30 per annum.

(e) Owners or managers of dairies shall pay a license fee of \$160 per annum.

(f) All dealers in food or food products not listed herein, or elsewhere in this chapter, shall pay a license fee of \$5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 554, ch. 366, par. 27.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

Conversion by commission merchants, § 22-1203.

## § 47-2328 [20: 1728]. Hotels.

Owners or managers of hotels shall pay a license fee of \$18 per annum. Every place where food and lodging are provided for transient guests shall be regarded as a hotel. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 28.)

## AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2329 [20: 1729]. Apartment houses.

Owners or managers of apartment houses shall pay a license fee of \$15 per annum: *Provided*, That where the owner or manager maintains a restaurant on said premises the license fee shall be \$18 per annum: *Provided further*, That if a restaurant is conducted on the premises by other than the owner or manager of the apartment house, the proprietor of such restaurant shall be liable for a separate restaurant license. Within the meaning of this section an apartment house shall be a building in which the rooms are occupied in suites by three or more families. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 29.)

## AMENDMENT

The 1932 act purported to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## NOTES TO DECISIONS

## PAYMENT UNDER PROTEST

Fact that a party pays a license fee for an apartment house under protest does not make the payment involuntary. *Blanks v. Hazen* (66 App. D. C. 118, 85 Fed. (2d) 284).

## § 47-2330 [20: 1730]. Lodging houses.

Owners or managers of lodging houses shall pay a license fee of \$15 per annum. Within the meaning of this section a lodging house shall be a building in which sleeping quarters are provided to accommodate ten or more transients. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 30.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)



§ 47-2331 [20: 1731]. Routed passenger vehicles, vehicles for hire—Hackers' licenses—Identification tags on vehicles.

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Utilities Commission of the District of Columbia, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year. The Public Utilities Commission shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other franchise, personal or license tax, in connection with such operation, the sum of eight-tenths of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of paragraph (b) of this section without the approval of the Public Utilities Commission of the District of Columbia.

(c) Owners of passenger vehicles for hire having a seating capacity of eight passengers or more, in addition to the driver or operator, other than those licensed to the preceding paragraph, shall pay a license tax of \$100 per annum for each vehicle used. No such vehicle shall be operated unless there shall be conspicuously displayed therein a license issued under the terms of this paragraph. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however*, That all licenses issued for a period prior to April 1, 1940,

shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(d) Owners of passenger vehicles for hire, whether operated from a private establishment or from public space, other than those licensed in the two preceding paragraphs, shall pay a license tax of \$25 per annum for each such vehicle used in the conduct of their business. Stands for such vehicles upon public space, adjacent to hotels or otherwise, may be established in the manner provided in section 40-603. The Public Utilities Commission is hereby authorized to make and enforce all such reasonable and usual police regulations as it may deem necessary for the proper conduct, control, and regulation of all vehicles described in this and the preceding paragraphs and section 47-2333. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however*, That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(e) No person shall engage in driving or operating any vehicle licensed under the terms of paragraphs (c) and (d) of this section without having procured from the commissioners of the District of Columbia or their designated agent a license and a badge numbered to correspond with the number of said license, neither of which shall be issued except upon evidence satisfactory to the director of motor vehicles under the direction of the commissioners of the District of Columbia that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of \$5. Such license shall be displayed within the vehicle and such badge prominently worn upon the driver's breast at all times while engaged in driving any vehicle licensed under the terms of paragraphs (c) and (d). Application for such license shall be made in such form as shall be prescribed to the commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each person so licensed, his annual license number, and all matters affecting his qualifications to be licensed hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred.

(f) All vehicles licensed under this section shall bear such identification tags as the commissioners of the District of Columbia may from time to time direct; and nothing herein contained shall exempt such vehicles from compliance with the traffic and motor-vehicle regulations of the District of Columbia, nor shall it deprive the Public Utilities Commission of the District of Columbia from assuming control over such vehicles, under such regulations as the Public Utilities Commission may from time to time adopt and promulgate: *Provided*, That nothing contained in this chapter shall be construed so as to diminish the powers conferred on the commissioners of the District of Columbia under the provisions of sections 40-301 to 40-303, 40-601 to 40-605, 40-609 to 40-611, and 40-613 to 40-615, nor to dimin-



ish the powers conferred on the Public Utilities Commission of the District of Columbia by said sections and by sections 40-1001 to 40-1007 creating the Public Utilities Commission. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 555, ch. 366, par. 31; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3.)

#### COMPILER'S NOTE

The reference to the various sections of chapters 3 and 6 of title 40 (District of Columbia Traffic Acts) should be read to include the powers conferred upon the Commissioners by the Act of Feb. 27, 1931, 46 Stat. 1424, ch. 317, where such act amends §§ 11-601, 11-616, 11-621, 11-623, and 11-1407.

#### AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2401.)

The April 5, 1939, amendment added the last sentence of (c) and the July 17, 1939 amendment changed the dates therein provided as follows: March 1 to April 1; February 15 to March 15; March 1, 1940, to April 1, 1940; and, February 29, 1940, to March 31, 1940.

The April 5, 1939, amendment deleted the words "Licenses issued under this subparagraph shall date from July 1, in each year. There shall be carried on each such vehicle a number corresponding to the number of the license issued therefor, in such place and of such character and dimensions as may be prescribed by the Public Utilities Commission of the District of Columbia. Said commission is hereby authorized to establish stands upon the public space, adjacent to hotels, or otherwise for occupancy by said vehicles, and is further authorized" and inserted in lieu thereof in (d) the second sentence and the first seven words of the third sentence; deleted the words "subject to the approval of the joint board created by section 6 (e) of the act entitled 'An act to amend the acts approved March 3, 1925, and July 3, 1926,' known as the District of Columbia Traffic Acts, and so forth, approved February 27, 1931" and inserted in lieu thereof in (d) the last eleven words of the third sentence thereof and the last sentence.

#### CROSS REFERENCES

General license fee required, § 40-103.

Prosecution of violations of laws or regulations, § 43-907.

#### NOTES TO DECISIONS

##### BUSSES

Statute requires, in respect of bus transportation, the licensing of vehicles rather than uses or businesses, and contemplates but one license for such a vehicle, which, under the stipulated facts operates primarily in regularly-routed passenger service and but occasionally in charter-bus and sight-seeing service. If the drafters intended to require a separate license for occasional charter-bus and sight-seeing service, they did not provide for it. *Capital Transit Co. v. District of Columbia* (66 App. D. C. 351, 87 Fed. (2d) 748)

##### PASSENGER VEHICLES FOR HIRE

Vehicles are "passenger vehicles for hire" when hired by an undertaker or lodge as clearly as when hired by individual passengers, and subject to tax. *Cave v. District of Columbia* (67 App. D. C. 138, 90 Fed. (2d) 383).

Unless a restricted meaning is to be given to the word "passenger," it follows that ambulances are "passenger vehicles for hire." *Hazen v. Chambers* (71 App. D. C. 220, 108 Fed. (2d) 741).

Sick or well, one who is carried, for hire, through the streets in a vehicle kept and driven by another for such purposes is considered a passenger in the ordinary sense of the word, and whether the hire is greater or less than the cost of the service is not material. *Hazen v. Chambers* (71 App. D. C. 220, 108 Fed. (2d) 741).

§ 47-2332 [20: 1732]. Rental or leasing of motor vehicle without driver.

The owners or managers of establishments where automobiles or other motor vehicles are kept for rent or lease without a driver shall pay a license fee of \$5 per annum for each such establishment: *Provided*, That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 32.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

See notes to § 47-2331.

§ 47-2333 [20: 1733]. Vehicles hauling goods from public space.

Owners of vehicles for hire, used in hauling goods, wares, or merchandise, and operating from public space, shall pay a license tax of \$25 per annum for each vehicle. Stands for such vehicles upon public space may be established in the manner provided in section 40-603. Licenses issued under this section shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however*, That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 33; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3.)

#### AMENDMENTS

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

The April 5, 1939, amendment added the last sentence. The July 17, 1939, amendment changed the dates therein contained as follows: March 1 to April 1; February 15 to March 15; March 1, 1940, to April 1, 1940; and, February 29, 1940, to March 31, 1940.

#### CROSS REFERENCE

See notes to § 47-2331.

§ 47-2334 [20: 1734]. Repairing of motor vehicles.

Owners or managers of establishments where motor vehicles of any description are washed, cleaned, greased, oiled, or repaired, for profit or gain, shall pay a license fee of \$5 per annum. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 34.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2335 [20: 1735]. Livery stables.

Owners or managers of livery stables shall pay a license fee of \$5 per annum: *Provided*, That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 35.)



## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2336 [20: 1736]. Sales on streets or public places.

No person shall sell any article of merchandise, or anything whatever, excepting newspapers sold at large and not from a fixed location, upon the public streets, or from public space in the District of Columbia, without a license first having been obtained under this section. Persons so licensed shall be considered as venders, whether selling from a fixed location, on foot from house to house, or from a vehicle of any description, and shall pay a license tax of \$12 per annum. Every vender so licensed shall be furnished with a badge corresponding to the number of his license, which badge shall be worn conspicuously whenever transacting business, and where sales are made from a vehicle such vender shall be provided with a metal plate containing a number similar to the number of his license, which plate shall be conspicuously attached to the vehicle at all times when such vender is transacting business: *Provided*, That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further*, That raisers of produce shall not be exempt from the license tax imposed unless they sell such produce at the several markets or by the wholesale in cart, wagon, or carload lots. The commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce necessary regulations governing the conduct upon the public streets and public spaces of venders licensed hereunder, including the power to locate the places where licensed venders on the public streets and public spaces shall stand, and to change them as often as the public interests require. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 36.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

Police and traffic regulations, §§ 1-224, 40-603.

## § 47-2337 [20: 1737]. Solicitors.

Solicitors shall pay a license fee of five dollars per annum. Any person who goes from house to house, or place to place, within the District of Columbia, selling or taking orders for or offering to sell or take orders for goods, wares, merchandise, or any article or thing of value for future delivery, or for services to be performed in the future or for the making, manufacturing, or repairing of any article or thing whatsoever for future delivery, and requiring or accepting a deposit for such future delivery or service, shall be deemed to be a "solicitor," within the meaning of this section: *Provided, however*, That this definition shall not apply to persons selling goods, wares, merchandise, or any article or thing of value for resale to retailers in that commodity. Any person desiring a solicitor's license shall make application to the commissioners of the District of Columbia or their designated agent on forms to be provided for that

purpose, stating the name of the applicant, the name and address of the person whom he represents, the class and kind of goods offered for sale, or the kind of service to be performed. Such application shall be accompanied by a bond in the penal sum of five hundred dollars, running to the District of Columbia, conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have the right of action on the bond for the recovery of money, or damages, or both. All orders taken by licensed solicitors shall be in writing in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 557, ch. 366, par. 37.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2338 [20: 1738]. Guides.

No person shall, for hire, guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do. The fee for each such license shall be ten dollars per annum. No license shall be issued hereunder without the approval of the major and superintendent of police. The commissioners of the District of Columbia are authorized and empowered to make reasonable regulations for the examination of all applicants for such licenses and for the government and conduct of persons licensed hereunder, including the power to require said persons to wear a badge while engaged in their calling. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 38.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## § 47-2339 [20: 1739]. Secondhand dealers.

Dealers in secondhand personal property, including the return or other unused portion of any ticket, order, or token purporting to evidence the right of the holder or possessor thereof to be transported by any railroad or other common carrier, however operated, from one state or territory of the United States, or from the District of Columbia, to any other state or territory of the United States or to the District of Columbia, shall pay a license tax of fifty dollars per annum. Every person engaged in the business of buying, selling, trading, exchanging, or dealing in secondhand personal property of any description, including the return or unused portion of any such ticket, order, or token, shall be regarded as a secondhand dealer. When any piping or other household fixtures or secondhand goods of any description whatever have been stolen and sold to a dealer in junk, or secondhand dealer, in the District of Columbia, under such circumstances that the commissioners of the District of Columbia, after hearing granted,



are satisfied that said dealer should have had reasonable ground to believe, or could have ascertained by reasonable inquiry or investigation, that the goods were stolen, and that the dealer did not make reasonable inquiry or investigation as to the title of the seller before making the purchase, the commissioners are authorized and directed to revoke the license of said dealer; and this action shall not be a bar to criminal prosecution for receiving stolen goods. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 39.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

Other provisions for regulation and supervision of secondhand dealers, §§ 1-224, 4-147.

#### NOTES TO DECISIONS

##### UNDER 1902 LAW

Provision in paragraph 27 of § 7 of the act of July 1, 1902, 32 Stat. 626 requiring consent of property-owners to issuance of licenses to conduct enumerated businesses is not applicable to junk dealers' licenses under paragraphs 27, 43. *Coombe v. United States ex rel. Selis* (55 App. D. C. 190, 3 Fed. (2d) 714).

##### SALES WITHOUT LICENSE

Engaging in the business of selling secondhand property without a license was not indictable at common law. Today it is at most but an infringement of local police regulations, and its moral quality is relatively inoffensive. *District of Columbia v. Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

§ 47-2340 [20: 1740]. Dealers in dangerous weapons.

Dealers in dangerous or deadly weapons shall pay a license tax of \$50 per annum. No license shall issue hereunder without the approval of the major and superintendent of police, and the commissioners of the District of Columbia are authorized and empowered to make and promulgate regulations for the conduct of the business of persons licensed hereunder, including the power to require a record to be kept of all sales of deadly or dangerous weapons, to prescribe a form therefor, and to require reports of all such sales to the major and superintendent of police at such time as the Commissioners may deem advisable. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 558, ch. 366, par. 40.)

#### COMPILER'S NOTE

This section may be superseded by § 22-3209 et seq.

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

On the authority of section 22-3210, it would appear that the prior approval of the major and superintendent of police is unnecessary.

§ 47-2341 [20: 1741]. Private detectives.

(a) Private detectives, or detective agencies, by whatsoever name called, shall pay a license tax of \$100 per annum: *Provided*, That no license shall be issued under this section without the approval of the major and superintendent of police.

(b) For the purpose of this section, the term "detective" or "detective agency" shall mean and include any person, firm, or corporation engaged in the business of, or advertising, or representing himself, or itself, as being engaged in the business of detecting, discovering, or revealing crime or criminals, or securing information for evidence relating thereto, or discovering or revealing the identity, whereabouts, character, or actions of any person or persons, thing or things.

(c) It shall be unlawful for any person to engage in the business of detective, or operate, manage, or conduct a detective agency, for profit or gain, or to advertise or represent his business to be that of a detective, or that of conducting, managing, or operating a detective agency, without first obtaining a license so to do.

(d) The Commissioners of the District of Columbia are authorized and empowered to make such reasonable regulations as they deem advisable for the government and conduct of the business of private detectives licensed hereunder, and are further authorized and empowered to revoke the license of a private detective when in their judgment such is deemed advisable in the public interest.

(e) All laws which govern the Metropolitan police force of the District of Columbia in the matters of persons, property, or money shall be applicable to all private detectives licensed hereunder, and such detectives shall make like returns and dispositions of such matters as is required by existing law and the rules of the Commissioners of the District of Columbia governing the Metropolitan police department. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 559, ch. 366, par. 41.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

#### CROSS REFERENCE

Other provisions concerning private detectives, §§ 4-168 to 4-174.

§ 47-2342 [20: 1751]. Fortune telling.

Mediums, clairvoyants, soothsayers, fortune tellers, palmists, or phrenologists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, shall pay a license tax of \$250 per annum. No license shall be issued hereunder without the approval of the major and superintendent of police, nor shall any license be issued hereunder to any person not an actual resident of the District of Columbia for two years next preceding his date of application: *Provided*, That no license shall be required of persons pretending to tell fortunes or practice palmistry, phrenology, or any of the callings herein listed, in a regular licensed theater, or as a part of any play, exhibition, fair, or show presented or offered in aid of any benevolent, charitable, or educational purpose: *And provided further*, That no license shall be required of any ordained priest or minister, or accredited representative of any such priest or minister, the fees for whose ministrations are not the private property of such ordained priest, minister, or accredited representative of such priest or minister. (July 1,



1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 43.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2343 [20: 1752]. Exposing persons or animals as targets prohibited.

No person shall set up, operate, or conduct any business or device by or in which any person, animal, or living object shall act or be exposed as a target for any ball, projectile, missile, or thing thrown or projected for or in consideration of profit or gain, directly or indirectly. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 44.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2344 [20: 1753]. Commissioners may regulate, modify, or eliminate license requirements.

The commissioners of the District of Columbia are authorized and empowered, when in their discretion such is deemed advisable, to require a license of other businesses or callings not listed in this chapter and which, in their judgment, require inspection, supervision, or regulation by any municipal agency or agencies and to fix the license fee therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision, or regulation, and are further authorized and empowered in their discretion to modify any of the provisions of this chapter so far as eliminating therefrom any business or calling in this chapter required to be licensed, or to raise or lower the amount of the license fee provided in this chapter, as the cost of inspection, supervision, or regulation is raised or lowered. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 562, ch. 366, par. 45.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2345 [20: 1754]. Promulgation of regulations authorized—Revocation of licenses.

The commissioners are further authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this chapter and to revoke any license issued hereunder when, in their judgment, such is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for any other reason they may deem sufficient. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 46.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2346 [20: 1755]. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any section added hereto

from time to time by the commissioners of the District of Columbia, or of any regulation made by the commissioners under authority of this chapter, shall be on information in the police court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 47.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2347 [20: 1756]. Penalties.

Any person violating any of the provisions of this chapter, or additions thereto made from time to time by the commissioners of the District of Columbia, where no specific penalty is fixed, or the violation of any regulation made by the commissioners under the authority of this chapter, shall upon conviction be fined not more than \$300 or imprisoned for not more than ninety days. Any person failing to file any information required by this chapter, or by any regulation of the commissioners of the District of Columbia made under the provisions hereof, or who in filing any such information makes any false or misleading statement, shall upon conviction be fined not more than \$300 or imprisoned for not more than ninety days. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 48.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

### NOTES TO DECISIONS

#### RIGHT TO TRIAL BY JURY

The penalty imposed by this section is not one as to which there is a constitutional right to a trial by jury. *District of Columbia v. Clawans* (300 U. S. 617, 81 L. Ed. 843, 57 Sup. Ct. 660, affg. 66 App. D. C. 11, 84 Fed. (2d) 265).

§ 47-2348 [20: 1757]. Saving clause.

Any violation of any provision of law or regulation issued hereunder which is repealed by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 49.)

#### AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2349 [20: 1758]. Severable provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 50.)



## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

§ 47-2350 [20: 1759]. Refund of erroneously paid fees.

The commissioners of the District of Columbia are authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7; July 1, 1932, 47 Stat. 563, ch. 366, par. 51.)

## AMENDMENT

The 1932 act purports to amend the 1902 act. In effect, it is a new enactment superseding the prior act. (See also Compiler's Note to § 47-2301.)

## CROSS REFERENCE

General provisions for refund of fees and taxes, § 47-1017 et seq.

## Chapter 24.—BOARD OF TAX APPEALS

## Sec.

- 47-2401. Tax appeals—Definitions.
- 47-2402. Board of Tax Appeals.
- 47-2403. Appeal from assessment—Payment under protest—Hearing and decision.
- 47-2404. Review by court—Procedure—Decision of board, when final—Modification or reversal.
- 47-2405. Appeals of real estate assessments.
- 47-2406. Appeal from imposition of tax involuntarily paid—Suit.
- 47-2407. Refund of erroneous collections.
- 47-2408. Rules of procedure.
- 47-2409. Summons—Authority to take testimony.
- 47-2410. Certain suits forbidden.
- 47-2411. Manner of serving notices.
- 47-2412. Reference by Commissioners to the Board.

§ 47-2401 [20: 972]. Tax appeals—Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning—

The word "tax" means the tax or taxes mentioned in this chapter.

The word "appeal" means the appeal provided in this chapter.

The word "board" means the Board of Tax Appeals for the District of Columbia created by this chapter.

The word "commissioners" means the commissioners of the District of Columbia or their duly authorized representative or representatives.

The word "District" means the District of Columbia.

The word "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, estate, or receiver.

The word "court" shall mean the United States Court of Appeals for the District of Columbia.

The word "assessor" shall mean the assessor of the District of Columbia.

The words "Board of Equalization and Review" shall mean the Board of Equalization and Review of the District of Columbia. (Aug. 17, 1937, ch. 690, title IX, § 1, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8.)

§ 47-2402 [20: 973]. Board of Tax Appeals.

The commissioners shall appoint a board of one person, subject to removal by the commissioners, to be called the "Board of Tax Appeals for the District

of Columbia," which person shall be a citizen of the United States. Such person shall be appointed for a term of four years, except such appointment as may be made for the remainder of an unexpired term. Any vacancy caused by death, resignation, or otherwise shall be filled by the commissioners only for an unexpired term. Such person shall be eligible for reappointment. Such person shall be an attorney and in active practice of law for at least ten years next preceding his appointment.

The salary of such person so appointed shall be \$8,000 per annum. The commissioners are authorized to employ such other personal services as may be necessary to carry out the provisions of this title and to provide for the expenses of the board. The salaries of employees other than the board shall be fixed in accordance with the Classification Act of 1923 (U. S. C., title 5, § 673), as amended, but such employees shall be appointed without regard to civil-service requirements. The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Aug. 17, 1937, ch. 690, title IX, § 2, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5 (a).)

## AMENDMENT

The 1939 amendment raised the salary from \$7,500 to \$8,000.

## CROSS REFERENCE

The sections of this chapter are part of the Revenue Act of 1939, see Compiler's Notes to § 47-1401.

§ 47-2403 [20: 974]. Appeal from assessment—Payment under protest—Hearing and decision.

Any person aggrieved by any assessment by the District against him of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance-premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due thereon, to the collector of taxes of the District of Columbia under protest in writing. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. The board shall hear and determine all questions arising on said appeal and shall make separate findings of fact and conclusions of law, and shall render its decision thereon in writing. The board may affirm, cancel, reduce, or increase such assessment. (Aug. 17, 1937, ch. 690, title IX, § 3, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8; July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5 (b).)

## AMENDMENT

The 1939 amendment deleted the word "or" before the words "insurance-premiums" and added thereafter the words "or motor-vehicle-fuel," and hyphenated the following pairs of words, "personal property," "business privilege," "gross receipts," "gross earnings," and "insurance premiums" as they appear.

## NOTES TO DECISIONS

## CONSTRUCTION

There is no conflict between this section and § 47-1604; they are merely alternative. *Rynex v. District of Columbia* (72 App. D. C. 386, 114 Fed. (2d) 842).



## TIME OF PAYMENT

The statute requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the 18 months provision fixed by § 47-1604. *Rynex v. District of Columbia* (72 App. D. C. 386, 114 Fed. (2d) 842).

§ 47-2404 [20: 975]. Review by court—Procedure—Decision of board, when final—Modification or reversal.

(a) The decision of the board may be reviewed by the court as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within thirty days after the decision is rendered. Such petition for review shall be filed with the board, and shall be in such form as the board by regulation shall provide. Upon such review the court shall have the power to affirm, or if the decision of the board is not in accordance with law, to modify or reverse the decision of the board, with or without remanding the case for hearing, as justice may require. The court shall have the exclusive jurisdiction to review the decisions of the board, and the judgment of the court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari in the manner provided in section 347, Title 28, U. S. Code. The court is authorized to adopt rules for the filing of the record on review, the preparation of the record for review, and the conduct of the proceedings upon such review and, until the adoption of such rules, the rules of the court relating to appeals in cases in equity, so far as applicable, shall govern. The findings of fact by the board shall have the same effect as a finding of fact by an equity court or a verdict of a jury.

(b) The board is authorized to fix a fee, not in excess of the fee usually charged and collected therefor by the clerk of the District Court of the United States for the District of Columbia, for comparing and preparing the transcript of record, and to fix charges for supplying copies of testimony or copies of other documents and papers. The fees and charges so fixed shall be paid to the collector of taxes of the District and deposited in the treasury of the United States to the credit of the District of Columbia.

(c) The decision of the board shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition be duly filed within such time; or (2) upon the expiration of time allowed for filing of petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court, or no petition for certiorari has been filed; or (3) upon denial of a petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court; or (4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the board be affirmed or the petition for review dismissed.

(d) If the Supreme Court directs that the decision of the board be modified or reversed, the decision of the board rendered in accordance with the mandate of the Supreme Court shall become final

upon the expiration of thirty days from the time it was rendered unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(e) If the decision of the board is modified or reversed by the court and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered in accordance with the mandate of the court shall become final upon the expiration of thirty days from the time such decision of the board was rendered, unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the board shall become final when so corrected.

(f) If the Supreme Court orders a rehearing, or if the case is remanded by the court for rehearing and if (1) the time allowed for filing of a petition for certiorari has expired and no such petition has been duly filed; or (2) the petition for certiorari has been denied; or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered upon such rehearing shall become final in the same manner as though no prior decision of the board had been rendered.

(g) As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of the issuance thereof, means the final mandate. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title IX, § 4, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8.)

## CROSS REFERENCE

Rules and regulations, § 47-2502 and notes.

## NOTES TO DECISIONS

## PAYMENT UNDER PROTEST

When taxpayer who had been previously taxed on basis of his equitable interest in marginal stocks but is then reassessed by tax authorities for full value, a payment under protest raises the question whether such new assessment was without authority of law. *Hunt v. District of Columbia* (71 App. D. C. 143, 103 Fed. (2d) 10).

§ 47-2405 [20: 976]. Appeals of real estate assessments.

Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47-708, 47-709, may, within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as therein provided.

Any person aggrieved by any assessment or valuation made in pursuance of section 47-710 may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner



and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any assessment made in pursuance of section 47-711 may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2403, 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any reassessment made in pursuance of section 47-712, may within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47-2403, 47-2404.

Any person aggrieved by a reassessment or redistribution made pursuant to section 47-716, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47-2403, 47-2404. (Aug. 17, 1937, ch. 690, § 5, title IX, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b).)

#### AMENDMENT

The 1939 act changed the date in paragraph (a) from "August 1" to "October 1" and added the proviso to that paragraph; changed the date in paragraph (b) from "August 1" to "October 15" and added the proviso to that paragraph; and changed the date in paragraph (c) from "February 1" to "April 15" and added the proviso to that paragraph.

#### § 47-2406 [20: 977]. Appeal from imposition of tax involuntarily paid—Suit.

Any taxpayer who shall have paid within three years immediately preceding the approval of the District of Columbia Revenue Act of 1937 any tax to the District involuntarily, and under circumstances which according to law would entitle such taxpayer to the right to sue at law for the recovery of such tax, may within ninety days from May 16, 1938, appeal from the imposition of such tax in the same manner and to the same extent as set forth in sections 47-2403, 47-2404. (Aug. 17, 1937, ch. 690, § 6, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

#### COMPILER'S NOTE

The Revenue Act of 1937 was approved Aug. 17, 1937. This provision is doubtless of a temporary nature.

#### CROSS REFERENCE

See note under § 47-2404. *Hunt v. District of Columbia* (71 App. D. C. 143, 108 Fed. (2d) 10).

#### NOTES TO DECISIONS

##### PAYMENT TO AVOID REVOCATION OF LICENSE

A corporation licensed to do business in the district which is assessed a tax on its earnings and fails to pay the sum until it receives from the assessor a rule to show cause why their license should not be revoked, and then pays the tax and penalty under protest to avoid revocation of their license, pays the tax involuntarily, entitling it

to sue for the recovery of the tax under this act. *Panitz v. District of Columbia* (72 App. D. C. 131, 112 Fed. (2d) 39).

A claim for refund of taxes filed on the ninety-first day was on time, where the ninetieth day fell on Sunday. *Sherwood Bros., Inc. v. District of Columbia* (72 App. D. C. 155, 113 Fed. (2d) 162).

#### DISMISSAL OF APPEAL

Dismissal of appeal by Board of Tax Appeals where the tax was voluntarily paid. *General Elec. Co. v. District of Columbia* (71 App. D. C. 321, 110 Fed. (2d) 261).

#### § 47-2407 [20: 978]. Refund of erroneous collections.

Any sum finally determined by the board to have been erroneously paid by or collected from the taxpayer shall be refunded by the District to the taxpayer from its annual appropriation for refunding erroneously paid taxes in said District. (Aug. 17, 1937, ch. 690, § 7, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

#### CROSS REFERENCE

Refunding tax, § 47-1016 et seq.

#### § 47-2408 [20: 979]. Rules of procedure.

The board shall adopt and promulgate rules of procedure in matters for determination by the board under the provisions of this chapter. (Aug. 17, 1937, ch. 690, § 8, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

#### CROSS REFERENCE

Rules and regulations, § 47-2502 and notes.

#### § 47-2409 [20: 979a]. Summons—Authority to take testimony.

The board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to sections 47-2401 to 47-2412; and the board is authorized to administer oaths and to take testimony for the purposes of the administration of sections of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the board may report that fact to the District Court of the United States for the District of Columbia or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpoenas of that court. (Aug. 17, 1937, ch. 690, § 9, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

#### § 47-2410 [20: 979b]. Certain suits forbidden.

No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax. (Aug. 17, 1937, ch. 690, § 10, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

#### § 47-2411 [20: 979c]. Manner of serving notices.

Any notice authorized or required under the provisions of this chapter may be given by mailing the



same to the person for whom it is intended, addressed to such person at the address given in any return filed by him, or, if no return has been filed, then to his last-known address. The proof of mailing of any notice mentioned in this chapter shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which must be determined under the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice. (Aug. 17, 1937, ch. 690, § 11, title IX, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

**§ 47-2412 [20: 979e]. Reference by Commissioners to the Board.**

In any matter affecting taxation, the determination of which is by law left to the discretion of the commissioners, the commissioners may, if they so elect, refer such matter to the board to make findings of fact and submit recommendations, such findings of fact and recommendations, if any, to be advisory only and not binding on the commissioners, and shall be without prejudice to the commissioners to make such further and other inquiry and investigation concerning such matter as they in their discretion shall consider necessary or advisable. (Aug. 17, 1937, ch. 690, § 13, title IX, as added July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 5 (c).)

**CROSS REFERENCE**

This section is part of the Revenue Act of 1939, see Compiler's Notes to § 47-1401.

**Chapter 25.—MISCELLANEOUS PROVISIONS**

**Sec.**

- 47-2501. Authorization for advance of funds by Secretary of Treasury.
- 47-2502. Regulations.
- 47-2503. Separability provisions.
- 47-2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

**§ 47-2501 [20: 971a]. Authorization for advance of funds by Secretary of Treasury.**

Until and including June 30, 1942, the Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922, is authorized and directed to advance, on the requisition of the commissioners of the District of Columbia, made in the manner now prescribed by law, out of any money in the treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the general expenses of said District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said commissioners to the treasury out of taxes and revenue collected for the support of the government of the said District of Columbia. (Aug. 17, 1937, 50 Stat. 692, ch. 690, § 2, title VII; May 16, 1938, 52 Stat. 369, ch. 223, § 7; July 26, 1939, 53 Stat. 1118, ch. 367, title VI; March 2, 1940, 54 Stat. 39, ch. 37, § 3.)

**AMENDMENTS**

The date in the first phrase of the first sentence, appeared in the 1937 act as June 30, 1938, in the 1938 act as June 30, 1939, in the 1939 act as June 30, 1940, and in the 1940 act as June 30, 1942.

The 1938 act deleted the word "the" from the phrase "of the taxes" in the last clause.

The 1939 act deleted the words "during said fiscal year" following the words "from time to time."

Except as shown by this amendment note, this section has been re-enacted in each act cited to the text.

**CROSS REFERENCE**

The sections of this chapter are part of the Revenue Act of 1937, see Compiler's Notes to § 47-1401.

**§ 47-2502 [20: 971b]. Regulations.**

The Commissioners of the District of Columbia are authorized to make such rules and regulations as may be necessary to carry out the provisions of the District of Columbia Revenue Act of 1937, as amended and shall prescribe and publish all needful rules and regulations for the enforcement of the Revenue Act of 1939. (Aug. 17, 1937, 50 Stat. 693, ch. 690, § 4, title VII; May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 2.)

**COMPILER'S NOTE**

The Revenue Act of 1937 is set out herein as §§ 40-101 to 40-105, 47-1401 to 47-1412, 47-1601 to 47-1629, 47-1801 to 47-1808, 47-1901 to 47-1903, 47-1905, 47-1907, 47-1908, 47-1911, 47-2501 to 47-2504.

The Revenue Act of 1939 is set out herein as §§ 11-332, 47-134, 47-1204, 47-1211, 47-1501 to 47-1543, 47-1601 to 47-1629, 47-1701, 47-2402, 47-2403, 47-2405, 47-2412, and 47-2501 to 47-2503.

**AMENDMENT**

The 1939 amendment added the last clause pertaining to the Revenue Act of 1939.

**CROSS REFERENCES**

Regulations for assessment of federal property, § 47-723.

Regulations for determining value of limited estate for inheritance tax purposes, § 47-1607.

Regulations for review of tax assessment, §§ 47-2504, 47-2408.

Regulations governing form and requisites of corporate income tax returns, § 47-1516.

Rules and regulations concerning records, accounts, and returns for income tax purposes, § 47-1529.

Rules and regulations for administration of inheritance and estate taxes, § 47-1618.

Rules and regulations for apportionment of income received from without the District for income tax purposes, § 47-1504.

Rules and regulations for taxation of motor vehicles, § 47-1210.

Rules and regulations generally, § 1-226 and notes.

Rules and regulations governing income tax returns of fiduciaries, § 47-1523.

**§ 47-2503 [20: 971c]. Separability provisions.**

If any provision of the District of Columbia Revenue Act of 1937 and the Revenue Act of 1939 or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Aug. 17, 1937, 50 Stat. 693, ch. 690, title VII, § 5; May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 1.)

**COMPILER'S NOTE**

For these acts as they are set out herein, see Compiler's Note to preceding section (§ 47-2502).

**AMENDMENT**

The words "and the Revenue Act of 1939" were inserted by authority of the 1939 amendment.



§ 47-2504 [20: 971d]. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioners or any person having an administrative duty under this chapter to divulge or make known in any manner any information obtained from the Bureau of Internal Revenue in accordance with any provisions of the District of Columbia Revenue Act of 1937, as amended. Any vi-

olation of the provisions of this section shall subject the offender to a fine of \$300 or imprisonment for ninety days. (Aug. 17, 1937, 50 Stat. 692, ch. 690, title VII, § 5, as added May 16, 1938, 52 Stat. 370, ch. 223, § 7.)

COMPILER'S NOTE

For the provisions of the Revenue Act of 1937, see Compiler's Note to § 47-2502.

CROSS REFERENCES

Secrecy of income tax returns, § 47-1521.

Secrecy of tax returns made under laws of District, § 47-1412.



## TITLE 48.—TRADE-MARKS AND TRADE NAMES

Chap.		Sec.
1.	Registration of beverage bottles-----	48-101
2.	Registration of milk containers-----	48-201
3.	Registration of containers for beverages composed principally of milk-----	48-301
4.	Registration of labor union labels-----	48-401

### Chapter 1.—REGISTRATION OF BEVERAGE BOTTLES

Sec.	
48-101.	Bottles of dealers in mineral waters may be registered.
48-102.	Use or sale without owner's permission.

§ 48-101 [19: 151]. Bottles of dealers in mineral waters may be registered.

All manufacturers and vendors of mineral waters and other beverages allowed by law to be sold in bottles, upon which their names or marks shall be respectively impressed, may file with the clerk of the District Court of the United States for the District of Columbia a description of such bottles and of the names or marks thereon, and shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 877.)

§ 48-102 [19: 152]. Use or sale without owner's permission.

It shall be unlawful for any person, without the permission of the owner thereof, to fill with mineral waters or other beverages any such bottles so marked, for sale, or to traffic in any such bottles so marked and not bought by him of such owner; and every person so offending shall be liable to a penalty of fifty cents for every bottle so filled, or sold, or used, or disposed of, or bought, or trafficked in, for the first offense, and of five dollars for every subsequent offense, to be recovered as other fines are recovered in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 878.)

#### CROSS REFERENCE

Criminal penalty for altering or imitating trade-mark or other label, § 22-1402.

#### STATUTORY REFERENCE

Federal trade-mark law, U. S. C., title 15, §§ 81-134.

### Chapter 2.—REGISTRATION OF MILK CONTAINERS

Sec.	
48-201.	Containers—Description may be filed in District Court.
48-202.	Using registered container of another.
48-203.	Wilfully defacing name registered by another.
48-204.	Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.
48-205.	Proceeding in police court to ascertain violations—Search warrant.
48-206.	Title to registered mark to be acquired only by written consent of registrant.
48-207.	Rights of former registrants preserved.

Sec.	
48-208.	"Person" defined.
48-209.	Type of containers to which law is applicable.
48-210.	Prosecutions—Penalties.
48-211.	Injunctive relief.

§ 48-201 [19: 161]. Containers—Description may be filed in District Court.

All persons, firms, partnerships, or corporations engaged in the bottling, selling, or distributing of milk or cream in bottles, cans, crates, or other containers within the District of Columbia, on which the name, trade-mark, or other device designating the owner is branded, blown, cut, carved, embossed, or impressed, may file with the clerk of the District Court of the United States for the District of Columbia a description of the name or names, marks or devices so used by them, the said description to be a statement under oath by the owner of said name, mark, or device. The said owner of said name, mark, or device shall, after filing the description as above required, cause the same to be published at least once a week for two consecutive weeks in a newspaper of general circulation in the District of Columbia. The said owner of said name, mark, or device shall thereafter file with the clerk of the District Court of the United States for the District of Columbia an affidavit made by himself or any other competent person stating that said description has been published as herein provided, and shall file in the office of the health department of the District of Columbia a copy of said registration and said affidavit of publication, both duly certified as true copies by the clerk of the District Court or the United States for the District of Columbia. The registration of any such name, mark, or device shall be complete on the filing of said certified copies in the health office of the District of Columbia, and thereafter the name, mark, or device shall be considered as registered in accordance with sections 48-201 to 48-211, inclusive, and any bottle, can, crate, or other container on which said name, mark, or device shall be or shall be placed shall be considered as registered in accordance with sections 48-201 to 48-211, inclusive. (July 3, 1926, 44 Stat. 809, ch. 737, § 1.)

#### CROSS REFERENCE

Other provisions concerning milk containers, §§ 10-114, 33-314.

§ 48-202 [19: 162]. Using registered container of another.

Whoever shall by himself or his agent fill, use, sell, offer for sale, give, buy, traffic in, or shall have in his possession with intent to fill, use, sell, offer for sale, give, buy, or traffic in any registered milk bottle or bottles, can or cans, crate or crates, or other containers on which appears the name, mark, or device, registered by another person, shall be guilty of a misdemeanor, and upon conviction shall be sub-



ject to the penalties in section 48-210. (July 3, 1926, 44 Stat. 810, ch. 737, § 2.)

**§ 48-203 [19: 163]. Wilfully defacing name registered by another.**

Whoever shall by himself or his agent wilfully deface, erase, alter, obliterate, cover up, or otherwise remove or conceal any registered name, mark, or device registered by another and being on any milk bottle, can, crate, or other container, or shall willfully break, destroy, or otherwise injure any registered milk bottle, can, crate, or other container which has been registered by another shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties prescribed in section 48-210. (July 3, 1926, 44 Stat. 810, ch. 737, § 3.)

**§ 48-204 [19: 164]. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.**

In any prosecution under sections 48-201 to 48-211, inclusive, the refusal of any person having possession of any registered milk bottle, can, crate, or other container to surrender possession of the same to the registrant of the name, mark, or device appearing thereon, after notice and demand by said registrant or his agent, shall be prima facie evidence of the unlawful use or traffic in the same contrary to the provisions of sections 48-201 to 48-211, inclusive. (July 3, 1926, 44 Stat. 810, ch. 737, § 4.)

**§ 48-205 [19: 165]. Proceeding in police court to ascertain violations—Search warrant.**

Whenever any person who has registered milk bottles, cans, crates, or other containers in accordance with the provisions of section 48-201 shall by himself or his agent make oath before the clerk of the police court of the District of Columbia that he has reason to believe, and does believe, that any of his registered milk bottles, cans, crates, or other containers, are being filled, used, bought, trafficked in, held, sold, offered for sale, broken, injured, or destroyed within the District of Columbia contrary to the provisions of sections 48-201 to 48-211, inclusive, by any person without the written consent of the registrant the judge of the police court to whom said complaint under oath is made may forthwith issue a search warrant directed to any police officer or other proper officer to search the premises whereon or wherein said registered milk bottles, cans, crates, or other containers are unlawfully held and may issue a warrant for the arrest of the person complained against; and if any one or more of such registered milk bottles, cans, crates, or other containers, or any parts of the same, shall be found upon the premises by the officer executing the said search warrant, he shall seize and take possession of all such registered milk bottles, cans, crates, or other containers, or parts thereof, and shall cause the same to be brought before the judge of the police court, who shall award the said registered milk bottles, cans, crates, and other containers to the person entitled to the same. (July 3, 1926, 44 Stat. 810, ch. 737, § 5.)

**CROSS REFERENCE**

Search warrants, § 23-301 et seq.

**§ 48-206 [19: 166]. Title to registered mark to be acquired only by written consent of registrant.**

No title may be acquired to any mark, name, or device, or any milk bottle, can, crate, or other container registered in accordance with sections 48-201 to 48-211 inclusive except by the consent in writing of the person who registered the same. (July 3, 1926, 44 Stat. 811, ch. 737, § 6.)

**§ 48-207 [19: 167]. Rights of former registrants preserved.**

All persons who prior to July 3, 1926, registered any milk bottles, cans, crates, or other containers in accordance with the laws existing at the time of said registration shall be exempted from filing a new description in accordance with the terms of sections 48-201 to 48-211 inclusive, and shall be entitled to the rights and benefits accruing under sections 48-201 to 48-211 inclusive in the same manner as if said registration was made in accordance with sections 48-201 to 48-211 inclusive: *Provided*, That a copy of said registration duly certified by the clerk of the District Court of the United States for the District of Columbia was within thirty days from and after July 3, 1926, filed in the health office of the District of Columbia. (July 3, 1926, 44 Stat. 811, ch. 737, § 7.)

**§ 48-208 [19: 168]. "Person" defined.**

Whenever the word "person" is used in sections 48-201 to 48-211 inclusive, it shall apply equally as well to one or more persons, copartnerships, and corporations. (July 3, 1926, 44 Stat. 811, ch. 737, § 8.)

**§ 48-209 [19: 169]. Type of containers to which law is applicable.**

The provisions of sections 48-201 to 48-211 inclusive, shall apply to all bottles, cans, crates, and other containers in which milk or cream of any grade, quality, or character is sold or offered for sale and shall include bottles, cans, crates, and other containers in which skimmed milk, buttermilk, double cream, and sour milk are sold. (July 3, 1926, 44 Stat. 811, ch. 737, § 9.)

**§ 48-210 [19: 170]. Prosecutions—Penalties.**

The violation of any of the provisions of sections 48-201 to 48-211 inclusive, shall be a misdemeanor, and prosecutions for violations of sections 48-201 to 48-211 inclusive, shall be in the police court of the District of Columbia. Upon conviction of a violation of the provisions of sections 48-201 to 48-211 inclusive, the penalty shall be a fine of not more than \$50 for the first offense and a fine of not more than \$100 for the second and each subsequent offense. (July 3, 1926, 44 Stat. 811, ch. 737, § 10.)

**CROSS REFERENCE**

Criminal penalty for altering or imitating trade marks, § 22-1402.

**§ 48-211 [19: 171]. Injunctive relief.**

Whenever any person who has registered milk bottles, cans, crates, or other containers as herein provided shall have, upon complaint under oath, prosecuted any other person for violation of the



provisions of sections 48-201 to 48-211 inclusive in the use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of such registered milk bottles, cans, crates, or other containers and said other persons shall have been convicted on three occasions at least for the said unlawful use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers, then the said registrant of said milk bottles, cans, crates, or other containers shall be entitled, upon making complaint to a justice of the District Court of the United States for the District of Columbia, holding an equity court, to have issued an injunction directed to said violator enjoining him from further illegal use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers. (July 3, 1926, 44 Stat. 811, ch. 737, § 11.)

### Chapter 3.—REGISTRATION OF CONTAINERS FOR BEVERAGES COMPOSED PRINCIPALLY OF MILK

#### Sec.

- 48-301. Definitions.
- 48-302. Registration authorized—Publication.
- 48-303. Refilling and sale by others prohibited—Penalty.
- 48-304. Prima facie evidence of unlawful use.
- 48-305. Police court to issue warrant on complaint of violation.
- 48-306. Regulations to be made by clerk of District Court.
- 48-307. Actions in tort permissible.

#### § 48-301 [19: 181]. Definitions.

The following words shall, in addition to their ordinary meaning, have the meaning herein given: The word "person" or "persons," in sections 48-302 to 48-305, 48-307 shall include "firms" or "corporations"; the word "vessel" or "vessels," in sections 48-302 to 48-305 shall include "cans," "bottles," "siphons," and "boxes"; the word "mark" or "marks" shall include "labels," "trade-marks," and all other methods of distinguishing ownership in vessels, whether printed upon labels or blown into bottles or engraved and impressed upon cans or boxes. (Mar. 3, 1901, ch. 854, § 878a, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

#### § 48-302 [19: 182]. Registration authorized — Publication.

Persons engaged in producing, manufacturing, bottling, or selling any lawful beverages composed principally of milk, in vessels, with their name, trade-mark, or other distinctive mark, and the word "registered" branded, engraved, blown, or otherwise produced thereon, or on which a paster trade-mark label is put upon which the word "registered" is also distinctly printed, may file with the clerk of the District Court of the United States for the District of Columbia a description by facsimile, or a sample of an original package so marked or branded or blown, showing plainly such names and marks thereon, together with their name in full, or their corporate name, and also their place of business in the District of Columbia, and if so filed shall cause the same to be published for not less than two weeks

successively in a daily or weekly newspaper published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 878b, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

#### CROSS REFERENCE

Other provisions concerning milk containers, §§ 10-114, 33-314, 48-201 et seq.

#### § 48-303 [19: 183]. Refilling and sale by others prohibited—Penalty.

Whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in section 48-302, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the first offense, be punished by a fine of not less than fifty cents for each such vessel, or by imprisonment for not less than ten days nor more than one year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than one nor more than five dollars for each such vessel, or by imprisonment for not less than twenty days nor more than one year, or by both such fine and imprisonment. (Mar. 3, 1901, ch. 854, § 878c, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

#### CROSS REFERENCE

Criminal penalties for altering or imitating trademarks, § 22-1402.

#### § 48-304 [19: 184]. Prima facie evidence of unlawful use.

The use or possession by any person not engaged in the production or sale of beverage as aforesaid, except the person who shall so have filed and published a description of the same as aforesaid, of any vessel marked or distinguished as aforesaid, the description of which shall have been filed and published as aforesaid, without purchase of the contents thereof from, or the written consent of, the person who shall so have filed and published the said description, shall be prima facie evidence of the unlawful use, possession of, or traffic in, such vessel, and the person so using or in possession of the same, except the person who shall so have filed and published the said description as aforesaid, shall be punished as provided in section 48-303. (Mar. 3, 1901, ch. 854, § 878d, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

#### § 48-305 [19: 185]. Police court to issue warrant on complaint of violation.

Upon complaint of any person who has complied with section 48-302, or of his agent, to the police court of the District of Columbia, or one of the judges thereof, that any person within the District of Columbia is guilty of the violation of any provision of this chapter, the said court or judge may issue a



search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said court or judge the person so believed to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this chapter shall be punished as aforesaid, and the said court or judge shall also order the property taken upon any such search warrant to be delivered to its owner. (Mar. 3, 1901, ch. 854, § 878e, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

## CROSS REFERENCE

Search warrants, § 23-301 et seq.

§ 48-306 [19: 186]. Regulations to be made by clerk of District Court.

The clerk of the District Court of the United States for the District of Columbia is authorized to make regulations and prescribe forms for the filing of labels, trade-marks, or other distinctive marks under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 878f, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

## CROSS REFERENCE

Rules and regulations generally, § 1-226 and notes.

§ 48-307 [19: 187]. Actions in tort permissible.

Nothing in this chapter shall prevent or restrain any person who is the legal owner of a trade-mark or label from proceeding in an action of tort against any person found guilty of violating this chapter. (Mar. 3, 1901, ch. 854, § 878g, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

#### Chapter 4.—REGISTRATION OF LABOR UNION LABELS

## Sec.

48-401. Adoption of label authorized—Registration—Assignment prohibited.

48-402. Use of registered label restricted.

48-403. Penalties.

§ 48-401 [19: 191]. Adoption of label authorized—Registration—Assignment prohibited.

A union or association of employees in the District of Columbia may adopt a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the labor of the members thereof. A drawing of such device may be filed in the office of the clerk of the District Court of the United States for the District of Columbia and the clerk shall register same in a book to be provided for such purpose and be entitled to collect \$1 for each registration. A certified copy of the

drawing so registered may be obtained from the clerk upon the payment of \$1 for each certification. Such certificate shall not be assignable by the union or association to whom it is issued. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 1.)

## STATUTORY REFERENCE

Registration of prints and labels, U. S. C., title 17, §§ 63, 64.

§ 48-402 [19: 192]. Use of registered label restricted.

No person shall in any way use or display the label, brand, mark, name, or other character adopted by any such union or association as provided in section 48-401 without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name, or other character, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped, or impressed, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor contained in any box, case, can, or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed. If copies of such device have been filed, the union or association may maintain an action in the District Court of the United States for the District of Columbia to enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display, or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display, or sale as may be proved, together with the profits derived therefrom. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 2.)

§ 48-403 [19: 193]. Penalties.

A person violating any of the provisions of section 48-402 shall be guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment. (Feb. 18, 1932, 47 Stat. 51, ch. 47, § 3.)

## CROSS REFERENCE

Criminal penalties for altering or imitating trade-mark, § 22-1402.



## TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap.	Sec.	
1. General provisions.....	49-101	
2. Rules of construction.....	49-201	
3. Laws remaining in force.....	49-301	

### Chapter 1.—GENERAL PROVISIONS

Sec.	
49-101.	The Code of the District of Columbia—Preparation and publication—Supplements.
49-102.	Laws set forth as establishing prima facie the laws of the District of Columbia.
49-103.	Copies of code and supplements conclusive evidence of original.
49-104.	Distribution of code—Slip and pamphlet copies.
49-105.	Additional quotas to Congress.
49-106.	Further quotas to Congress for personal use—Distribution of code to new members.
49-107.	Committee on Revision of the Laws to prescribe form and style of code and ancillaries.
49-108.	Curtailment of number of copies of code to be printed—Printing and distribution of supplements may be dispensed with.
49-109.	Functions of Committee on Revision of Laws may be vested in other agency.
49-110.	Exchange and sale of building, police, plumbing, and municipal regulations.
49-111.	Disposition of compilation of laws affecting District of Columbia.

#### § 49-101 [1:1]. The Code of the District of Columbia—Preparation and publication—Supplements.

There shall be prepared and published under the supervision of the Committee on Revision of the Laws of the House of Representatives—

A consolidation and codification of the laws, general and permanent in their nature, relating to or in force in the District of Columbia, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. Such Code shall be designated "The Code of the District of Columbia";

A supplement for each session of the Congress to the then current edition of the Code of the District of Columbia, cumulatively embracing the legislation of the then current supplement, and correcting errors in such edition and supplement;

New editions of the Code of the District of Columbia, correcting errors and incorporating the then current supplement. New editions shall not be published oftener than once in each five years. Copies of each such edition shall be distributed in the same manner as provided in the case of supplements to the code of which it is a new edition. Supplements published after any new edition shall not contain the legislation of supplements published before such new edition. (May 29, 1928, 45 Stat. 1007, ch. 910, § 2; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 2.)

#### STATUTORY REFERENCE

This section is in U. S. C., title 1, § 52.

#### § 49-102 [1:2]. Laws set forth as establishing prima facie the laws of the District of Columbia.

In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of

Columbia, and of each state, territory, or insular possession of the United States—

The matter set forth in the edition of the Code of the District of Columbia current at any time shall, together with the then current supplement, if any, establish prima facie the laws, general and permanent in their nature, relating to or in force in the District of Columbia on the day preceding the commencement of the session following the last session the legislation of which is included, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature.

The Code of the District of Columbia may be cited as "D. C. Code."

Supplements to the Code of the District of Columbia may be cited as "D. C. Code, Sup. ,," the blank in each case being filled with Roman figures denoting the number of the supplement.

New editions of such code may be cited as "D. C. Code, ed.," the blank in each case being filled with figures denoting the last year the legislation of which is included in whole or in part. (May 29, 1928, 45 Stat. 1007, ch. 910, § 4; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 3.)

#### STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54.

#### § 49-103 [1:3]. Copies of code and supplements conclusive evidence of original.

Copies of the Code of Laws relating to the District of Columbia, when and if completed, and copies of the supplements provided for by section 49-101, printed at the Government Printing Office and bearing its imprint, shall be conclusive evidence of the original of such code and supplements in the custody of the Secretary of State. (May 29, 1928, 45 Stat. 1007, ch. 910, § 5.)

#### STATUTORY REFERENCE

This section is in U. S. C., title 1, § 55.

#### § 49-104 [1:4]. Distribution of code—Slip and pamphlet copies.

Copies of the Code of Laws relating to the District of Columbia, when and if completed, and of the supplements provided for by section 49-101 shall be distributed by the Superintendent of Documents in the same manner as bound volumes of the Statutes at Large: *Provided*, That no slip or pamphlet copies of the Code of Laws relating to the District of Columbia, when and if completed, and of the supplements provided for by section 49-101 need be printed or distributed: *And provided further*, That the Code of Laws relating to the District of Columbia, when and if completed, and the supplements provided for by section 49-101 shall, upon enactment, be published as separate parts of the Statutes at Large. (May 29, 1928, 45 Stat. 1007, ch. 910, § 6.)



## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 56.

## § 49-105 [1:5]. Additional quotas to Congress.

In addition to quotas provided for by section 49-104 there shall be printed, published, and distributed of the Code of Laws relating to the District of Columbia, when and if completed, with tables, index, and other ancillaries, suitably bound and with thumb inserts and other convenient devices to distinguish the parts, and of the supplements thereto as provided for by section 49-101, ten copies of each for each member of the Senate and House of Representatives of the Congress in which the original authorized publication is made, for his use and distribution, and in addition for the Committee on Revision of the Laws of the House of Representatives and the Committee on the Judiciary of the Senate a number of bound copies of each equal to ten times the number of members of such committees, and one bound copy of each for the use of each committee of the Senate and House of Representatives. (May 29, 1928, 45 Stat. 1008, ch. 910, § 7.)

## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 57.

## § 49-106 [1:6]. Further quotas to Congress for personal use—Distribution of code to new Members.

In addition the Superintendent of Documents shall, at the beginning of the first session of each Congress, supply to each senator and representative in such Congress, who may in writing apply for the same, one copy each of the Code of Laws relating to the District of Columbia, when and if completed, and the latest supplement thereto: *Provided*, That such applicant shall certify in his written application for the same that the volume or volumes for which he applies is intended for his personal use exclusively: *And provided further*, That no senator or representative during his term of service shall receive under this section more than one copy each of the volumes enumerated herein. (May 29, 1928, 45 Stat. 1008, ch. 910, § 8.)

## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 58.

## § 49-107 [1:7]. Committee on Revision of the Laws to prescribe form and style of code and ancillaries.

The publications provided for in section 49-101, shall be printed at the Government Printing Office, and shall be in such form and style and with such ancillaries as may be prescribed by the Committee on Revision of the Laws of the House of Representatives. The Librarian of Congress is directed to cooperate with such committee in the preparation of such ancillaries. Such publications shall be furnished with such thumb inserts and other devices to distinguish parts, with such facilities for the insertion of additional matter, and with such explanatory and advertising slips, and shall be printed on such paper and bound in such material, as may be prescribed by such committee. (Mar. 2, 1929, 45 Stat. 1542, ch. 586, § 4; June 13, 1934, 48 Stat. 948, ch. 483, § 1, 2.)

## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54a.

## § 49-108 [1:8]. Curtailment of number of copies of code to be printed—Printing and distribution of supplements may be dispensed with.

In order to avoid duplication and waste—

Curtailment of the number provided by law to be printed and distributed of the volumes or publications enumerated in section 49-101 may be directed by such committee, except that the Public Printer shall print such numbers as are necessary for depository library distribution and for sale; and

Such committee may direct that the printing and distribution of any supplement to the Code of the District of Columbia be dispensed with entirely, except that there shall be printed and distributed for each Congress at least one supplement to such code, containing the legislation of such Congress. (Mar. 2, 1929, 45 Stat. 1540, ch. 586, § 1.)

## COMPILER'S NOTE

The words "such committee" should probably read "the Committee on Revision of the Laws of the House of Representatives."

## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 51a.

## § 49-109 [1:9]. Functions of Committee on Revision of Laws may be vested in other agency.

The functions vested by sections 49-101 to 49-108, inclusive, in the Committee on Revision of the Laws of the House of Representatives may from time to time be vested in such other agency as the Congress may by concurrent resolution provide: *Provided*, That the printing, binding, and distribution of the volumes and publications enumerated in section 49-101 shall be done under the direction of the Joint Committee on Printing. (Mar. 2, 1929, 45 Stat. 1542, ch. 586, § 7.)

## STATUTORY REFERENCE

This section is in U. S. C., title 1, § 54d.

## § 49-110 [20:42]. Exchange and sale of building, police, plumbing, and municipal regulations.

The commissioners of the District of Columbia are authorized to issue in their discretion, without charge, to officers and the judiciary of the government of the District of Columbia, and to other officers of the government, and to institutions of learning, and to state and city officials, by way of documentary exchange, copies of building, police, plumbing, and other municipal regulations made and published by them in their official capacity, not exceeding in all one hundred copies, and the remainder of such publications shall only be disposed of by sale at not less than the cost price and ten per centum thereof; and all moneys received from the sale of said regulations shall be paid for each fiscal year into the treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (Feb. 25, 1910, 36 Stat. 208, ch. 62; Mar. 4, 1911, 36 Stat. 1299, ch. 240; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; acts 1922, 42 Stat. 668, ch. 249, § 1.)

## COMPILER'S NOTE

Acts 1922, 42 Stat. 668, ch. 249, § 1, provided as follows: "Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privi-



leges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, \* \* \*; and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, \$9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. 307, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of the 1922 act above quoted. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

§ 49-111 [20:43]. Disposition of compilation of laws affecting District of Columbia.

The commissioners of the District of Columbia, after supplying each of the heads of the several departments and offices of the government and the judiciary of said District with the necessary copies of the bound editions of the laws affecting said District, which are prepared in the office of the secretary of the board at the close of each session of Congress, may sell the surplus volumes at a rate per volume to be fixed by them, approximating but not less than the pro rata cost of compilation, and deposit all money so received to the credit of the appropriation out of which such cost is paid. (Mar. 1, 1901, 31 Stat. 826, ch. 670.)

## Chapter 2.—RULES OF CONSTRUCTION

### Sec.

- 49-201. Rules stated.
- 49-202. Words importing singular number to include plural.
- 49-203. Masculine gender to include all genders.
- 49-204. Person to include partnerships and corporations.
- 49-205. Executor to include administrator.
- 49-206. Oath to include affirmation.
- 49-207. Insane person and lunatic.

§ 49-201 [1:11]. Rules stated.

In the interpretation and construction of the Act of Congress approved March 3, 1901 (31 Stat. 1189) the following rules shall be observed, namely: (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

### COMPILER'S NOTE

The rules of construction contained in sections 49-202 to 49-207 are applicable only to that portion of this

code that was included in the District of Columbia Code of 1901 (act of Mar. 3, 1901, 31 Stat. 1189, ch. 854).

## NOTES TO DECISIONS

### EFFECT OF AMENDMENT

The amendment of an act without changing the particular provision that had previously been construed by the court does not amend away or modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell v. Petty* (52 App. D. C. 310, 286 Fed. 772).

### PARTICULAR AND GENERAL PROVISIONS

Upon appeal to decide conflict between two sections, held that, "where there is in the same statute, a particular enactment, and also a general one, which in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." *Tri-State Motor Corp. v. Standard Steel Car Co.* (51 App. D. C. 109, 276 Fed. 631).

§ 49-202 [1:12]. Words importing singular number to include plural.

Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49-203 [1:13]. Masculine gender to include all genders.

Words importing the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49-204 [1:14]. Person to include partnerships and corporations.

The word "person" shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49-205 [1:15]. Executor to include administrator.

Wherever the word "executor" is used it shall include "administrator," and vice versa, unless such application of the term would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49-206 [1:16]. Oath to include affirmation.

Wherever an oath is required an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)

§ 49-207 [1:17]. Insane person and lunatic.

The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, preamble.)



### Chapter 3.—LAWS REMAINING IN FORCE

Sec.

- 49-301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.  
 49-302. Ordinances of Washington and of levy court to remain in force.  
 49-303. Vestries.  
 49-304. Repeal provisions of 1901 Code.

§ 49-301 [1: 21]. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general Acts of Congress not locally inapplicable in the District of Columbia, and all Acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except in so far as the same are inconsistent with, or are replaced by, subsequent legislation of Congress. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.)

#### COMPILER'S NOTES

This section is affected by § 1640 of the act of March 3, 1901, 31 Stat. 1436, ch. 854, which saved from repeal any municipal ordinance or regulation in force on January 1, 1902, except in so far as the same were inconsistent with or replaced by some provisions of that act.

In accord with this section, a number of early British statutes have been incorporated in this Code.

#### NOTES TO DECISIONS

##### DECISIONS UNDER PRIOR LAW

Act of January 15, 1897 (29 Stat. 487) and § 330 of ch. 14 of the Federal Penal Code permitting jury to qualify verdict of guilty in cases of murder and rape are superseded by code. *Johnson v. United States* (38 App. D. C. 347, affd. 225 U. S. 405, 56 L. Ed. 1142, 32 Sup. Ct. 748).

##### IN GENERAL

This section is a general legislative declaration in affirmation of preexisting decisions upon the subject. *Moss v. United States* (23 App. D. C. 475).

Act of Maryland Legislative Assembly of 1723, ch. 16, § 10 (Abert's Comp. Stat. D. C., p. 176), relative to Sunday work does not apply in District of Columbia. *District of Columbia v. Robinson* (30 App. D. C. 283).

Section 1 of D. C. 1901 provided as judicial bases for determination of District of Columbia laws, British statutes in force in Maryland on February 27, 1801, the common law, and principles of equity. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

##### ARREST WITHOUT WARRANT

In the District, and at common law, an officer may not arrest for misdemeanor without warrant unless it is committed in his presence or within his view. *Maghan v. Jerome* (67 App. D. C. 9, 88 Fed. (2d) 1001).

##### BRITISH STATUTES

The provision of D. C. 1901, relating to British statutes in force in Maryland on February 27, 1801, was intended by Congress to mean those British statutes to the benefit of which Maryland inhabitants were entitled under the Maryland Declaration of Rights of 1776, and did not incorporate in the District of Columbia law, as amending the common law or otherwise, British statutes enacted between 1776 and 1801. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

##### COMMON LAW

As to common-law crimes and jurisdiction to try the same, see *Palmer v. Lenovitz* (35 App. D. C. 303).

Common law as to surface waters prevails. *Baltimore & O. R. Co. v. Thomas* (37 App. D. C. 255).

Common-law method of procuring talesman in capital cases when regular panel is exhausted. *Milano v. United States* (40 App. D. C. 379).

"Except as 'repealed by express statutory provision, or modified by inconsistent legislation, or where it has become obsolete or unsuited to our republican form of government, the common law of England in all its branches, both civil and criminal, remains to-day the law of the District of Columbia \* \* \*.'" *Lisner v. Hughes* (49 App. D. C. 40, 258 Fed. 512) citing *De Forest v. United States* (11 App. D. C. 466).

Common law held to prevail in the District of Columbia as to descent of property. *Cunningham v. Rodgers* (50 App. D. C. 51, 267 Fed. 609).

The common law, insofar as it permits accumulation of income from a testamentary trust which is to terminate with the death of the testator's two nieces, involving the accumulation of a huge sum of money for a period probably in excess of sixty years, is obsolete and repugnant to our conditions, and therefore not applicable to the District of Columbia. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921).

The provision in § 1 of the D. C. 1901, that the common law shall remain in force in the District of Columbia, intended the common law of England as it existed in Maryland on Feb. 27, 1801, and so far as it had not become obsolete or unsuited to our conditions, and it was not identical with the common law of England. *Burdick v. Burdick* ((D. C.-D. C.), 33 Fed. Supp. 921); *United States v. Griffith* (55 App. D. C. 123, 2 Fed. (2d) 925).

##### COMPACT BETWEEN MARYLAND AND VIRGINIA

The compact between Maryland and Virginia as to shores of the Potomac River is not in force in District. *United States ex rel. Greathouse v. Hurley* (61 App. D. C. 360, 63 Fed. (2d) 137).

##### CONSPIRACY AGAINST UNITED STATES

The Supreme [District] Court of the [United States for the] District of Columbia sitting as a criminal court had jurisdiction to try an indictment for conspiracy to commit an offense against the United States. *Pitts v. Peak* (60 App. D. C. 195, 50 Fed. (2d) 485).

##### DECISIONS OF MARYLAND COURTS

Decisions of Maryland courts, being founded upon general principles, and made since the organization of the District of Columbia, are not binding upon the courts of the District as authorities, though entitled to all the respect due to the opinions of the highest court of the State. *Phillips v. Negley* (117 U. S. 665, 29 L. Ed. 1013, 6 Sup. Ct. 901).

Decisions of Maryland, giving to the statutes of that state a construction at variance with that which prevailed at the time of the cession of the District of Columbia, does not control the decision of Supreme [District] Court of the [United States for the] District as to the effect of those statutes on the territory within the District. *Morris v. United States* (174 U. S. 196, 43 L. Ed. 946, 19 Sup. Ct. 649).

##### ESPIONAGE ACT

Provisions of the Espionage Act apply in the District of Columbia in a case of a violation of a United States statute applicable only to the District. *Nuckols v. United States* (69 App. D. C. 120, 99 Fed. (2d) 353).

##### FULL FAITH AND CREDIT

When rights have ripened into a judgment of a court in another state, the full faith and credit clause applies and courts of the District are bound, equally with courts of the states, to observe the command of the full faith and credit clause, wherever applicable. *Loughran v. Loughran* (292 U. S. 216, 78 L. Ed. 1219, 54 Sup. Ct. 684).

##### LAWS OF MARYLAND

Laws of Maryland derive their force, in this district, under 2 Stat. 103, ch. 15, §§ 1, 3, 5. But this section which gives effect to those laws, does not amount to a reenactment of them, so as to sustain them, under the powers of exclusive legislation, given to Congress over this district. This act could only give to those laws that force which they previously had in this tract under the laws of Maryland. *Bank of Columbia v. Okely* (4 Wheat. (17 U. S.) 235, 4 L. Ed. 559).

By this act it is provided that the laws of the State of Maryland, as they then existed, should be and continue in



force in that part of the district which was ceded by that State to the United States. *Lee v. Lee* (8 Pet. (33 U. S.) 44, 8 L. Ed. 860).

Congress by this act provided that the laws of Maryland shall be and continue in force in that part of the District which was ceded by that State to the United States. *Clawans v. Sheetz* (67 App. D. C. 366, 92 Fed. (2d) 517).

#### LAWS OF VIRGINIA

Under this act the laws of Virginia, as they then existed, were declared to be and continue in force in that part of the District of Columbia which was ceded by that State to the United States, and by them accepted for the permanent seat of government; and all suits, process, etc., depending in the court of hustings for the town of Alexandria, were transferred to the circuit court of the District. *Turner v. Fendall* (1 Cranch. (5 U. S.) 117, 2 L. Ed. 53).

Right of Virginia to legislate for the District did not cease or determine until 27th of February 1801. *Young v. Bank of Alexandria* (4 Cranch. (8 U. S.) 384, 2 L. Ed. 655).

#### PENDING SUITS

In the matter of procedure or practice, pending suits must be governed by the provisions of the code where the procedure does not affect the substantial rights of parties, but where the procedure does affect the substantial rights of parties, the code shall not apply as to the pending suits, but only the old law. Thus, U. S. C., title 28, §§ 512 and 513, relating to District of Columbia, were kept in force by § 1638 of the code of 1901. *Costello v. Palmer* (20 App. D. C. 210).

#### SELECTION OF JURORS

The code supersedes prior law relative to selection of grand and petit jurors. *Clark v. United States* (19 App. D. C. 295).

#### STATUTE OF LIMITATIONS

Statute of limitations, R. S. § 1044, held applicable to contempts in the District of Columbia. *Gompers v. United States* (233 U. S. 604, 58 L. Ed. 1119, 34 Sup. Ct. 693, rev'g 40 App. D. C. 293).

#### TRIAL BY JURY

Common-law offense of reckless driving is a crime within the constitutional provision for a trial by jury. *Colts v. District of Columbia* (59 App. D. C. 224, 38 Fed. (2d) 535).

#### WRIT OF CERTIORARI

No statute has been passed enlarging the scope of the common-law writ of certiorari in the District, and when sought between private persons, the writ will be granted or denied, in the sound discretion of the court. *United States ex rel. Eure v. Borden* (65 App. D. C. 84, 80 Fed. (2d) 527).

§ 49-302 [1: 22]. Ordinances of Washington and of levy court to remain in force.

All laws and ordinances of the City of Washington, and of the levy court of the District of Columbia, except as modified or repealed by Congress or the legislative assembly of the District since June 1, 1871, or until so modified or repealed, remain in full force. (R. S., D. C., § 91; Comp. Stat. D. C., p. 338, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

#### NOTES TO DECISIONS

##### LEGISLATIVE ASSEMBLY

Act of legislative assembly, D. C., August 23, 1871, for prevention of cruelty to animals, was not repealed by section 1636 (§ 49-304) as "that section expressly saves from repeal all acts of the legislative assembly of the District of Columbia relating to 'police regulations.'" *Johnson v. District Court* (30 App. D. C. 520).

§ 49-303 [1: 23]. Vestries.

All acts and parts of acts relating to the organization and powers of vestries, trustees, or other

governing bodies of any religious denomination shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this Code. (Mar. 3, 1901, ch. 854, § 1636, par. 9, as added June 30, 1902, 32 Stat. 546, ch. 1329.)

§ 49-304. Repeal provisions of 1901 Code.

"Sec. 1636. All acts and parts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed, except:

"First. Acts and parts of acts relating to the rights, powers, duties, or obligations of the United States.

"Second. Acts and parts of acts relating to the Court of Claims.

"Third. Acts and parts of acts relating to the organization of the District government, or to its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

"Fourth. Acts and parts of acts relating to the militia.

"Fifth. All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both.

"Sixth. Acts and parts of acts of Congress relating solely to the Departments of the General Government in the District of Columbia, or any of them.

"Seventh. Acts or parts of acts authorizing, defining, and prescribing the organization, powers, duties, fees, and emoluments of the register of wills of the District of Columbia and his office.

"Eighth. An act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regulation of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicians in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally, all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

"Ninth. Acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination.

"All acts and parts of acts included in the foregoing exceptions, or any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code."

"Sec. 1637. The incorporation into this code of any general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private or temporary character, shall not repeal nor in any way affect any appropriation or any provision of a private or temporary character contained in any of said acts, but the same shall remain in force."

"Sec. 1638. The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done or any right accruing or accrued or any suit or proceeding



had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue and may be enforced in the same manner as if such repeal had not been made: *Provided*, That the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings civil or criminal."

"*Sec. 1639.* The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith."

"*Sec. 1640.* Nothing in the repealing clause of this code contained shall be held to affect the operation or enforcement in the District of Columbia of the common law or of any British statute in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, or of the principles of equity or admiralty, or of any general

statute of the United States not locally inapplicable in the District of Columbia or by its terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, or of any municipal ordinance or regulation, except in so far as the same may be inconsistent with, or is replaced by, some provision of this code."

"*Sec. 1641.* All offenses committed and all penalties or forfeitures incurred in the District prior to the date on which this code is to take effect may be prosecuted and punished in the same manner and with the same effect as if this code had not been enacted."

"*Sec. 1642.* Where any action or proceeding by the provisions of chapter forty-one of this code would be barred at the time it goes into effect, or within one year thereafter, which would not be so barred by prior laws, such action or proceeding may be brought or instituted within such period of one year, anything in said chapter to the contrary notwithstanding."

"*Sec. 1643.* That nothing herein contained shall be held to affect the term of office of any judicial or other officer holding office when this code goes into effect and operation, except when, as in the case of the present justices of the peace and constables, a contrary intention is manifested."



# Parallel Reference Tables

## BRITISH STATUTES

Statute	Chap.	Sec.	Kilty	Alex.	D. C. 1940	Statute	Chap.	Sec.	Kilty	Alex.	D. C. 1940
6 Edward I (1278)-----	5	1	211	83	45-1301	4 Anne (1705)-----	16	1	245	420, 659	13-206
13 Edward I (1285)-----	4		212	106	18-207		16	2	245	660	13-318
	7		212	111	18-208		16	4	246	660	13-212
	15	1	212	121	21-117		16	7		660	13-319
	31			126	11-321		16	9, 10	246	660, 661	45-933
	34	4	213	138	18-203		16	11	246	661	13-210
14 Edward III (1340)-----	6	1	216	167	13-304		16	12	246	661	13-218
36 Edward III (1362)-----	15	1	221	177	13-201		16	21	246	662	45-309
17 Richard II (1393)-----	6	1	224	199	13-219		16	27	247	664	16-101
4 Henry VI (1425)-----	3	1	226	224	13-306	6 Anne (1707)-----	18	1	247	675	16-527
4 Henry VII (1487)-----	20		229	259	13-220		18	2	247	675	16-528
8 Henry VI (1429)-----	12	2	227	233, 234	13-308, 309		18	3	247	676	16-529
							18	4	247	677	16-530
	12	4	227	234	13-310		18	5	247	677	16-531
	15	1	227	242	13-311	7 Anne (1708)-----	19	1	247	679	45-608
9 Henry III (1225)-----	7	1	205	1	18-201		19	2	247	680	45-609
	8	1	205	12	15-213	8 Anne (1709)-----	14	1	248	681	45-918
		2	205	12	16-2003		14	4	248	682	45-922
		3	205	12	16-2004	9 Anne (1710)-----	14	1	248	689	16-701
	8	4	205	12	16-2005		14	2	248	690	16-702
9 Henry V (1421)-----	4	1	226	221, 222	13-305		14	4	248	691	16-703
11 Henry IV (1409)-----	3	1	225	211, 212	13-307		14	5	248	691	16-704
11 Henry VI (1433)-----	5	1	227	243	45-1303		14	8	248	692	16-705
21 Henry III (1236)-----			208	36	28-2803		20	7	248	695	13-320
21 Henry VIII (1529)-----	4	1	230	280	18-605	4 George II (1731)-----	10	1, 2	249	700	45-620
23 Henry VIII (1531)-----	15	1	231, 236	287, 432	11-1517		26	1	249	702	13-202
27 Henry VIII (1535)-----	10	2	231	294	45-1202		28	2	249	705	16-532
	10	6	231	296	18-206		28	3	249	707	16-533
	10	7	231	296	18-209		28	4	249	707	16-534
	10	9	231	297	18-205		28	6	249	708	45-931
32 Henry VIII (1540)-----	30	2	232	327	13-313	5 George I (1718)-----	13	1	248	697	13-312
52 Henry III (1267)-----	23	2	209	46, 47	45-1302	6 George II (1733)-----	14	5	250	720	13-203
18 Elizabeth (1576)-----	14	1, 2	235	411	13-314	7 George II (1734)-----	20	1	251	726	45-605
27 Elizabeth (1585)-----	5	1	235, 245	420, 659	13-206		20	2	251	727	45-606
	5	2	235	421	13-207		20	3	251	728	45-607
43 Elizabeth (1601)-----	8	2	236	427	20-113	11 George II (1738)-----	19	3	251	732	45-920
4 James I (1606)-----	3	2	231, 236	287, 432	11-1517		19	11	251	737	45-934
21 James I (1623)-----	13	2, 3	237	442, 443	13-315		19	12	251	737	16-502
16 Charles II (1664)-----	7	2	239	476	16-706		19	14	251	738	45-923
	7	3	239	477	16-707		19	15	251	739	45-921
16 and 17 Charles II (1664)-----	8	1	239	484, 485	13-316		19	19, 20	251	741, 742	45-919
	8	2, 5	239	485	13-317	11 George III (1771)-----	20	1	253	791	45-924
29 Charles II (1676)-----	3	3			12-301, note		20	2	253	791	45-925
	3	14, 15	241	511	15-104		20	3	253	792	45-926
	3	16		511	15-207	23 George II (1750)-----	11	1	252	766	23-204
	7	6	242	562	13-102		11	2	252	766	23-205
30 Charles II (1677)-----	7	2	176	567	20-114	24 George II (1751)-----	23	1	252	768	28-2801
4 and 5 W. and M. (1692)-----	16	4	242	579	45-610		23	2		770	28-2802
	20	3	243	581	15-106	25 George II (1752)-----	6	1	253	781	19-104
	24	12		585	20-112		6	2	253	782	19-106
8 and 9 William III (1697)-----	11	1	243	602	11-1513		6	7	253	783	19-105
	11	8	244	604	15-111	29 George II (1756)-----	31	1	253	788	45-927
	11	8	244	604	13-205		31	2	253	789	45-928
9 and 10 William III (1698)-----	17	3	244	634	28-410		31	3	253	790	45-929
3 and 4 Anne (1704)-----	9	7, 8	245	653	28-920		31	4	253	790	45-930

## MARYLAND STATUTES

Date	Chapter	Section	D. C. 1940
1751	25	1-16	Pages LXV, LXVI.
1777	6	1	13-222; 16-702.
1779	25	7	19-411.
1780	23	3	16-704.
1781	16		13-202; 16-702, 704, 707; 19-410, 411.
1783	27	1-3	Pages LXVI, LXVII.
1784	45	1-5	Page LXVII.
1785	72	25	13-219.
1786	10		19-410.
1788	46		Page XXVIII.
1789	23	I-XIV	Pages LXVII, LXVIII.
1791	45	1-13	Pages XXVIII-XXXI.
1792	49	1-2	Page XXXI.
1793	58	I-IV	Page XXXI.
1797	56	1-9	Page LXIX.
1798	101, subch. 15	12	11-505.
		13	11-506.
		14	11-507.
		15	11-508.
		16	11-509.
		17	11-510.
		19	11-511.
		20	11-512.
1799	85	1-4	Page LXIX.



## VIRGINIA STATUTES

Date	Chapter	Section	U. S. Stat.		D. C. 1940
			Vol.	Page	
1789					
Dec. 3	-----	I-IV	-----	-----	Page XXVIII.
1824					
Jan. 27	38	9	4	796	47-807.
1846					
Feb. 3	64	1-3	-----	-----	Page XLVI.

## ACTS OF LEGISLATIVE ASSEMBLY OF THE DISTRICT OF COLUMBIA

Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1871					1871				
Aug. 19	48	51	-----	1-303	Aug. 23	146	108	10	47-120
Aug. 22	78	65	-----	47-101		148	108	13	11-1201
Aug. 23	96	69	21	22-3401		149	108	16	43-1506
	135	106	1	22-801		150	108	18	1-301
	135	106	2	22-802		150	108	19	1-302
	135	106	3	22-803	1872				
	136	106	4	22-804	Jan. 19	52	31	1	47-1016
	136	106	5	22-805		52	31	2	47-1017
	137	106	6	22-806		53	31	4	47-1018
	137	106	7	22-807	1873				
	137	106	8	22-808	June 23	50	8	3	31-118
	137	106	9	22-809	June 25	65	25	1	S. 1-703, 707, 710
	138	106	10	22-811				2	S. 1-707
	138	106	11	22-812				3	S. 1-714
	138	106	12	22-813				4	1-704
	143	108	1	47-305		65	25	4	1-709
	145	108	7	47-302		65	25	5	

## REVISED STATUTES OF THE UNITED STATES

Revised Statutes	D. C. 1940	Revised Statutes	D. C. 1940	Revised Statutes	D. C. 1940
193	47-107 note.	1820	9-105.	4860	31-1003.
441	31-1022.	2038	32-317, and note.	4861	31-1004.
769	11-1001 note.	3679	47-105 note.	4862	31-1005.
1661	R. '33, 47 Stat. 1428, ch. 202, § 1.	4844	32-405.	4863	31-1006.
1797	11-1104.	4849	21-319.	4865	31-1012.
1803	43-1538.	4852	32-407.	4866	31-1015.
1805	43-1537.	4853, 4854	32-406.	4867	31-1016.
1806	22-3118.	4856	21-332.	4868	31-1017.
1813	7-620.	4857	21-333.	4869	31-1019.
1818	7-1209.	4859	31-1001.		

## REVISED STATUTES OF THE DISTRICT OF COLUMBIA

R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940
1	1-101; 22-3122.	95	Temporary.	155	S. 47-703.
2	1-102; 22-3122.	96	1-104; 22-3122.	156-172	S. 47-1002, 1003, 1005 to 1009.
3	1-218.	97-110	S. 1-316.	173	47-1015.
4, 5	R. '74, 18 Stat. 116, ch. 337, § 1.	111-114	S. 47-310.	174	S. 47-1003.
6	1-220.	115	S. 1-316; S. 31-102 to 104.	175	S. 47-1005 to 1009.
7-52	R. '74, 18 Stat. 116, ch. 337, § 1.	116	47-104.	176	S. '02, 32 Stat. 621, ch. 1352, § 6.
53	S. '78, 20 Stat. 103, 108, ch. 180, § 3, 13.	117	S. 47-310.	177-183	S. '95, 28 Stat. 650, ch. 79.
54-71	R. '74, 18 Stat. 116, ch. 337, § 1.	118	47-104.	184	S. 47-1001 to 1003.
72, 73	S. 6-101, 102.	119-123	S. 1-316.	185-187	S. 47-1002, 1003, 1005 to 1009.
74-76	R. '74, 18 Stat. 116, ch. 337, § 1.	124, 125	S. 47-102.	188	S. 1-316.
77	7-101.	126-134	Temporary.	189	S. 22-1111; S. 47-2003, 2004.
78	S. 47-310.	135	R. '28, 45 Stat. 988, ch. 901, § 1. <sup>1</sup>	190, 191	S. 8-112, 113; S. 11-210; S. 31-1010 note; S. 47-201, 204.
79	S. 1-228.	136, 137	Temporary.		
80	1-803.	138	47-722.	192	4-412.
81	S. '78, 20 Stat. 103, ch. 180, § 3.	139	47-723.	193	Obsolete.
82	1-802.	140	S. 47-713, 1202.	194	S. 39-102.
83	S. '78, 20 Stat. 103, ch. 180, § 3.	141	S. 1-316.	195	43-1503.
84	R. '74, 18 Stat. 116, ch. 337, § 1.	142	S. 31-301; S. 47-501 to 503, 713, 1207.	196	S. '81, 21 Stat. 466, ch. 134, § 1
85	1-308.	143	47-409.	197	43-1521.
86	1-316.	144	S. 47-403.	198	43-1522.
87	47-103.	145, 146	S. 8-112, 113; S. 11-210; S. 31-1010 note; S. 47-201, 204.	199-202	S. 43-1510 to 1513.
88	S. '22, 42 Stat. 668, ch. 249, § 1.	147	S. 47-713, 801 to 803.	203	43-1523.
89	S. 11-101, 201, 301, 601.	148	S. 47-801.	204	43-1501.
90	S. 11-1001, 1101; S. 45-701; S. 49-304 note.	149, 150	S. 31-301; S. 47-501 to 503, 713, 1207.	205	43-1525.
91	49-302.		Superseded.	206	43-1526.
92	S. 49-304 note.	151	47-1107.	207	43-1527.
93	R. '01, 31 Stat. 1434, ch. 854, § 1636.	152	S. 47-1001.	208	43-1528.
94	1-107.	153, 154		209-213	S. '95, 28 Stat. 650, ch. 79.
				214	43-1507.
				215	43-1508.

<sup>1</sup> Repealed in part.



## REVISED STATUTES OF THE DISTRICT OF COLUMBIA—Continued

R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940
216	43-1509.	396	4-139.	794-796	R. '01, 31 Stat. 1434, ch. 854, § 1636.
217	43-1524.	397	4-140.	797	S. 15-401.
218	43-1534.	398	4-141.	798	S. 15-402.
219	43-1535.	399	4-142.	799	Temporary.
220	43-1536.	400	4-143.	800	S. 11-312, 313.
221	Federal.	401	4-144.	801	S. 11-310, 312, 313.
222	S. 7-1205; S. 8-108.	402	4-145.	802	S. 11-312.
223	7-1202.	403	4-146.	803	S. 11-320.
224	7-1203.	404	4-147.	804	13-221.
225	7-1206.	405	4-148.	805, 806	S. 17-101.
226, 227	7-1207.	406	4-149.	807	S. 11-1405 to 1407.
228, 229	7-1204.	407	4-150.	808	S. '01, 31 Stat. 1383, 1336, 1388, ch. 854, §§ 1230, 1246, 1263, 1264.
230	7-1208.	408	4-151.	809	S. 16-501.
231	S. 9-105 note.	409	4-152.	810-812	S. 16-1901 to 1903.
232	S. 7-702 to 705.	410	4-153.	813	S. 16-1909.
233	7-710.	411	4-154.	814-820	S. 16-1802 to 1808.
234	S. 31-301; S. 47-501 to 503, 713, 1207.	412	4-155.	821-824	S. 16-1811 to 1814.
235	S. '02, 32 Stat. 321, ch. 1036, § 6.	413	4-156.	825, 826	R. '01, 31 Stat. 1434, ch. 854, § 1636.
236-245	Federal.	414	4-157.	827	S. 13-401; S. 16-901.
246	7-101.	415	4-158.	828	R. '01, 31 Stat. 1434, ch. 854, § 1636.
247	7-102.	416	4-159.	829	S. 23-2701, 2703, 2709.
248	S. 7-109.	417	4-160.	830-832	R. '01, 31 Stat. 1434, ch. 854, § 1636.
249	7-105.	418	4-161.	833	S. '02, 32 Stat. 543, ch. 1329.
250	S. 7-103.	419	4-162.	834, 835	S. 16-1102, 1103.
251	S. 7-202 to 215.	420	4-163.	836	R. '01, 31 Stat. 1434, ch. 854, § 1636.
252-256	S. 7-108, 109.	421	4-164.	837	13-222; 16-702, 706, 707.
257-266	S. 7-202 to 215.	422	4-165.	838	S. 22-1602, 1608; S. 23-107.
267	7-332.	423	4-166.	839	S. 23-109.
268	22-3120.	424	4-167.	840	R. '01, 31 Stat. 1434, ch. 854, § 1636.
269	22-3121.	425	4-168.	841	S. 1-316.
270	22-3122.	426	4-169.	842	S. 22-2303.
271, 272	S. 31-201, 207.	427	4-170.	843	S. 23-401.
273	S. 31-211.	428	4-171.	844	R. '01, 31 Stat. 1434, ch. 854, § 1636.
274	31-1102.	429	4-172.	845	S. 23-113.
275-280	S. 31-101, 1110 to 1113.	430	4-174.	846-849	S. 17-101.
281	31-1110.	431	4-175.	850-823	R. '01, 31 Stat. 1434, ch. 854, § 1636.
282	31-1111.	432	22-505.	929	19-401.
283	31-1109.	433	22-1306.	930	19-402.
284, 285	S. 31-102 to 104.	434	4-176.	931, 932	S. 11-1503; S. 15-212, 214, 215, 303, 308.
286-293	S. 16-601 to 604.	435	S. '17, 39 Stat. 1123-1130, ch. 165, which was R. '33, 48 Stat. 28, ch. 19, § 12.	933	19-406.
294-305	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.	436	S. 1-104.	934	19-407.
306	31-1112.	437	4-177.	935	19-408.
307-309	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.	438	4-178.	936	S. 19-405; S. 45-704, 710.
310	31-1113.	439	S. 1-316.	937-993	R. '01, 31 Stat. 1434, ch. 854, § 1636
311	S. '06, 34 Stat. 316, 317, ch. 3446, §§ 2, 3.	440-452	R. '01, 31 Stat. 1434, ch. 854, § 1636	994	S. '09, 35 Stat. 623, ch. 134.
312	S. 1-316.	453	29-513.	995	S. 11-703.
313-316	S. 1-103, 218, 801; S. 43-1503, 1506, 1521.	454	29-514.	996	S. 11-722.
317	31-805.	455	29-515.	997	S. '21, 41 Stat. 1310, ch. 125, § 1.
318	31-806.	456	29-516.	998	32-205.
319	31-807.	457, 458	R. '01, 31 Stat. 1434, ch. 854, § 1636.	999	S. 11-705.
320	31-808.	459	45-408.	1000, 1001	S. 11-713.
321	4-101.	460	45-409.	1002	S. 11-719.
322-326	S. '78, 20 Stat. 107, ch. 180, § 6.	461-550	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1003	R. '01, 31 Stat. 1434, ch. 854, § 1636.
327	S. 1-316.	551	R. '84, 23 Stat. 14, ch. 28, § 2.	1004	S. 11-701.
328-333	S. '78, 20 Stat. 107, ch. 180, § 6.	552-719	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1005	S. 11-740.
334	S. 39-603.	Chap. 20	R. '84, 23 Stat. 66, ch. 143, § 14. <sup>1</sup>	1006, 1007	S. 11-724.
335	4-119.	720-722	R. '96, 29 Stat. 120, ch. 177, § 13.	1008	S. 11-718, 724.
336	S. '78, 20 Stat. 107, ch. 180, § 6; S. '06, 34 Stat. 221, ch. 3056.	723-726	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1009	S. 11-715.
337	S. 4-102, 103, 106, 121.	727	R. '96, 29 Stat. 194, ch. 303, § 11.	1010-1013	S. 11-320, 716.
338	S. 1-316.	728	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1014	S. 11-715.
339-343	S. 4-102, 103, 106, 121.	729, 730	R. '96, 29 Stat. 194, ch. 303, § 11.	1015	S. 11-748; S. 22-805, 807.
344	4-126.	731-749	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1016	S. 11-715.
345	S. 4-102, 103, 106, 121.	750, 751	S. 11-301.	1017, 1018	S. 11-724.
346	4-127.	752	11-303.	1019	S. 15-209, 210.
347-349	S. 4-102, 103, 106, 121.	753-757	S. 11-310 to 313.	1020	S. '09, 35 Stat. 623, ch. 134.
350	S. 4-109.	758, 759	R. '89, 25 Stat. 749, ch. 308, § 1.	1021, 1022	S. 11-742, 743.
351	4-104.	760	S. 11-305.	1023-1025	S. 11-748; S. 22-805, 807.
352	Obsolete.	761	S. 11-309.	1026-1029	S. 11-723, 739; S. 17-101, 104.
353	4-128.	762	S. 11-313.	1030	S. 11-701.
354	S. 4-103, 151.	763	11-306.	1031-1033	S. 11-701.
355	S. 4-124.	764	11-307.	1034	S. 11-722.
356	S. 4-125.	765	R. '78, 20 Stat. 99, ch. 110.	1035	4-136.
357-360	4-129.	766	S. 11-325; S. 16-416.	1036-1040	S. 11-748; S. 22-805, 807.
361-364	S. '16, 39 Stat. 718, ch. 433, § 12.	767	11-308.	1041-1043	S. 11-601.
365	4-130.	768	S. 13-108.	1044	S. 11-609.
366, 367	S. 4-103, 151.	769	11-1001 note.	1045	S. '07, 34 Stat. 886, ch. 912.
368	S. 1-216, 219, 221, 234.	770	S. 17-101.	1046	S. 11-624.
369-372	S. 4-102, 103, 106, 121, 123.	771	11-304.	1047, 1048	S. 11-309, 312, 601, 610.
373	4-132.	772	S. 17-101.	1049	S. 11-602; S. 32-205.
374	S. 4-102, 103, 106, 121, 123.	773	S. 17-103.	1050	S. 11-606; S. 32-206.
375, 376	S. 4-115.	774-778	S. '01, 31 Stat. 1201, ch. 854, §§ 75, 76, 79, 80.	1051	S. 11-602; S. 32-205.
377	S. 4-122, 124.	779	S. '01, 31 Stat. 1202, ch. 854, § 81, which was R. '02, 32 Stat. 523, ch. 1329.	1052-1055	S. 11-606; S. 32-206.
378, 379	4-133.	780	S. '93, 27 Stat. 436, ch. 74, § 9, which was R. '27, 44 Stat. 1336, ch. 273, § 7.	1056	S. 11-608.
380	S. 6-104 to 106.	781	S. 11-315.	1057	S. 11-620.
381-385	S. 4-102, 103, 106, 121, 123.	782	S. 16-301; S. 18-305, 402, 702 to 705.	1058	S. 11-621.
386	4-134.	783	S. 16-307.	1059	S. 11-620.
387, 388	S. '78, 20 Stat. 107, ch. 180, § 6.	784	S. 16-311; S. 23-2403.	1060	S. 11-622.
389	4-135.	785	S. 16-314.	1061	S. 11-620.
390	4-137.	786	S. 16-311; S. 23-2403.	1062, 1063	S. 11-623.
391	S. 4-601.	787-789	S. 13-108 to 110.	1064	S. 11-616.
392	4-123.	790	S. 13-103.	1065	11-611.
393	S. 4-601.	791, 792	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1066	11-612.
394	4-136.	793	15-109.	1067	11-613.
395	4-138.			1068	11-614.

<sup>1</sup> Repealed in part.



## REVISED STATUTES OF THE DISTRICT OF COLUMBIA—Continued

R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940	R. S. D. C.	D. C. 1940
1073-1078	S. 17-103.	1173	S. 22-403, 2205.	1190	R. '01, 31 Stat. 1434, ch. 854, § 1636.
1079, 1080	S. 11-625.	1174	S. 4-145, 146.	1191	S. 1-227.
1081, 1082	S. '01, 31 Stat. 1378, ch. 854, §§ 1187, 1188.	1175	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1192	R. '89, 25 Stat. 781, ch. 328, § 63. <sup>1</sup>
1083	S. '02, 32 Stat. 542, ch. 1329.	1176	22-3402.	1192	S. 39-106, 107.
1084-1092	S. '01, 31 Stat. 1378-1379, ch. 854, §§ 1190-1198.	1177	22-3403.	1193-1222	R. '89, 25 Stat. 781, ch. 328, § 63.
1093-1096	S. 23-704 to 706.	1178	S. 17-103.	1223	S. 39-501.
1097-1099	Temporary.	1179	22-3413.	1224-1261	R. '89, 25 Stat. 781, ch. 328, § 63.
1100-1143	S. '11, 36 Stat. 1002-1004, ch. 192, § 1.	1180	22-2602.	1262	R. '09, 35 Stat. 634, ch. 146.
1144	S. '01, 31 Stat. 1321-1331, 1341, ch. 854, §§ 802-868, 934.	1181	S. '17, 40 Stat. 82, ch. 15, § 12.	1263-1268	R. '89, 25 Stat. 781, ch. 328, § 63.
1145, 1146	S. 22-107.	1182, 1183	S. '17, 39 Stat. 1123, ch. 165, § 1, which was R. '33, 48 Stat. 28, ch. 19, § 12.	1269-1271	R. '09, 35 Stat. 634, ch. 146.
1147	Superseded.	1184	S. '01, 31 Stat. 1323, 1327, 1333, ch. 854, §§ 822, 847-850, 880.	1272-1274	R. '89, 25 Stat. 781, ch. 328, § 63.
1148	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1185	S. '01, 31 Stat. 1324, 1327, ch. 854, §§ 826, 827, 847, 880.	1275-1280	S. 39-806.
1149	S. 8-112, 113; S. 11-210; S. 31-1010 note; S. 47-201, 204.	1186	S. 22-103.	1281-1283	R. '89, 25 Stat. 781, ch. 328, § 63.
1150-1172	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1187	S. 22-3108, 3114.	1284	S. 39-903.
		1188, 1189	S. 48-101, 102.	1285	S. 39-101.
				1286	S. 39-501.
				1287-1295	R. '89, 25 Stat. 781, ch. 328, § 63

## COMPILED STATUTES OF THE DISTRICT OF COLUMBIA

Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940
20	85	18-605	223	4	15-213;	325	42	45-922	357	8	16-529	449	43	13-218
36	164	18-201			16-2003	326	46	16-532	357	9	16-530	450	45	13-210
36	165	18-203			to 2005	327	47	16-533	357	10	16-531	451	54	13-102
37	169	18-207	237	26	45-610	328	48	16-534	366	5	13-320	460	88	13-304
38	170	18-208	242	10	16-706	328	50	45-931	395	1	45-605	461	89	13-307
39	173	18-206, 209	243	11	16-707	329	53	45-920	396	2	45-606	461	90	13-305
40	175	18-205	243	12	16-701	332	60	45-934	397	3	45-607	461	91	13-306
41	178	20-113	244	13	16-702	332	61	16-502	417	101	11-1518	462	93	13-308, 309
41	179	20-114	244	15	16-703	333.	63	45-923	418	105, 106	11-1517	462	94	13-310
41	180	20-112	245	16	16-704	333	64	45-921	442	5	11-321	462	95	13-311
66	3	28-410	245	17	16-705	334	66, 67	45-919	442	6	13-221	462	96	13-206, 207
68	9, 10	28-920	287	3, 4	13-314	335	70	45-927	445	27	13-201	463	99	13-312
69	14	13-205;	287	5	13-316	335	71	45-928	445	28	13-202	472	145	23-205
		15-111	288	6	13-317	335	72	45-929	446	29	13-203	496	31, 32	45-933
75	6	15-109	289	10	13-317	336	73	45-930	446	31	21-117	496	33	45-309
78	11	45-620	290	16, 17	15-104	336	74	45-924	447	34	16-101	497	38	18-111
79	13	45-608	291	19	15-106	336	75	45-925	447	35	13-212	537	2	45-1202
79	14	45-609	318	19	45-1302	336	76	45-926	447	36	13-206	557	5	19-104
104	97	13-219	319	21	45-1301	338	4	49-302	448	37	13-313	558	6	19-106
212	94	28-2803	320	26	45-1303	356	6	16-527	448	38, 39	13-315	558	7	19-105
222	1	15-207	325	41	45-918	356	7	16-528	449	42	13-318			

<sup>1</sup> Repealed in part.



# CODE OF 1901

Mar. 3, 1901, 31 Stat. at Large, chapter 854

Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940
1189	pre- amble	49-201 to 207	1203	90	16-1306	1219	176	S. 11-1508	1231	258	16-106	1244	343	18-517
1189	1	45-309 note; 49- 301	1203	91	21-202	1219	177	11-1507	1231	259	R. '02, 32 Stat. 528, ch. 132 <sup>3</sup>	1244	344	18-519
1190	2	11-101	1203	92	21-203	1219	178	11-402				1244	345	18-522
1190	3-5	S. 11-701	1203	93	16-1301; 21-213	1219	179 to	S. 11-403				1245	346	18-523
1191	6	11-710	1204	94	18-611	1220	182		1231	260	18-501	1245	347	18-524
1191	7	S. 11-715	1204	95	45-616	1220	183	11-1001	1232	261	20-101	1245	348	18-518
1191	8	S. 11-722, 723	1204	96	18-612	1220	184	11-1002	1232	262	20-301	1245	349	18-525
1191	9	11-703	1205	97	45-1101	1220	185	11-323	1232	263	20-302	1246	350	18-526
1191	10	11-704	1205	98	45-1102	1220	186	11-1101	1232	264	20-303	1246	351	18-527
1191	11	S. 11-719	1205	99	45-1103	1220	187	11-1102	1233	265	20-304	1246	352	18-528
1191	12	11-724	1205	100	45-1104	1220	188	S. 47-204	1233	266	20-305	1246	353	18-529
1191	13	11-725	1205	101	15-110	1221	189	11-1103	1233	267	20-306	1246	354	18-513
1192	14	11-726	1206	102	13-105	1221	190	11-1201	1233	268	20-307	1246	355	18-514
1192	15	11-727	1206	103	13-106	1221	191	11-1202	1233	269	20-308	1246	356	18-520
1192	16	11-728	1206	104	13-107	1221	192	11-1203	1233	270	20-309	1247	357	18-502
1192	17	11-729	1206	105	13-108	1221	193	11-1204	1233	271	20-310	1247	358	18-521
1192	18	11-731	1206	106	13-109	1221	194	11-1205	1233	272	20-311	1247	359	18-530
1192	19	11-732	1207	107	13-110	1221	195	11-1206,	1234	273	20-201	1247	360	20-506
1192	20	11-735	1207	108	13-111	1221	196	1515	1234	274	20-202	1247	361	20-601
1192	21	11-736	1207	109	13-112	1221	197	11-1207	1234	275	20-203	1247	362	20-602
1192	22	11-737	1207	110	13-113	1222	198	11-1208	1234	276	20-204	1247	363	20-603
1192	23	11-738	1207	111	16-1501	1222	199	11-1401	1234	277	20-205	1248	364	20-604
1192	24	11-739	1207	112	13-104	1222	200	11-1402	1234	278	20-206	1248	365	20-605
1192	25	11-740	1208	113	11-326	1222	201	11-1403	1234	279	20-207	1248	366	20-606
1192	26	11-741	1208	114	11-327	1222	202	11-1404	1234	280	20-208	1248	367, 368	R. '02, 32 Stat. 530, ch. 1329
1192	27	S. 11-701	1208	115	11-328	1222	203	11-1405	1234	281	20-209			
1192	28	11-742	1208	116	4-159; 11- 501, 505 to 512; 19- 402; 32- 101, 104	1222	204	11-1406	1234	282	20-210	1248	369	20-105
1192	29	11-743	1208	117	11-503	1222	205	11-1407	1234	283	20-211	1249	370	20-607
1192	30, 31	S. 11-723; S. 17-104	1208	118	11-502	1222	206	11-1409	1234	284	20-212	1249	371	20-608
1192	32	S. 11-722	1208	119	11-504	1222	207	11-1410	1235	285	20-213	1249	372	20-609
1192	33	11-744	1209	120	19-409	1223	208	11-1411	1235	286	20-214	1249	373	18-701
1192	34	11-745	1209	121	19-403	1223	209	11-1412	1235	287	20-215	1249	374	18-702
1192	35	11-746	1209	122	20-503	1223	210	11-1413	1235	288	20-216	1249	375	18-703
1192	36	S. 17-104	1209	123	11-513	1223	211	11-1414	1235	289	20-217	1249	376	18-704
1192	37	11-747	1210	124	20-504	1223	212	11-1415	1235	290	20-218	1250	377	18-705
1192	38	11-713	1210	125	20-107	1224	213	S. 22-1414	1235	291	20-219	1250	378	18-706
1192	39, 40	S. 11-701	1210	126	11-514	1224	214	S. 22-1414	1235	292	20-220	1250	379	18-707
1192	41	11-748; 22- 805, 806	1210	127	11-515	1224	215	11-1417	1236	293	20-102	1250	380	18-708
1192	42	11-601	1211	128	20-109	1224	216	11-1419	1236	295	20-104	1250	381	18-719
1192	43	11-602; 32- 205	1211	129	11-516	1224	217	11-1420	1236	296	20-108	1250	382	18-710
1192	44	11-616	1211	130	19-301	1224	218	11-1301	1236	297	20-117	1250	383	18-711
1192	45	11-617	1211	131	19-302	1224	219	11-1302	1236	298	20-103	1250	384	18-712
1192	46	11-618	1211	132	19-305	1224	220	11-1304	1237	299	20-105	1250	385	18-713
1192	47	11-619	1211	133	19-306	1224	221	11-201	1237	300	20-312	1250	386	18-714
1192	48	11-606	1212	134	19-307	1224	222	11-202	1237	301	20-110	1250	387	18-716
1192	49	32-206	1212	135	19-308	1224	223	11-203	1237	302	20-111	1251	388	18-717
1192	50	11-608	1212	136	19-309	1224	224	11-204	1237	303	20-610	1251	389	18-718
1192	51	11-609	1212	137	19-307	1226	225	11-205	1237	304	20-401	1251	390	18-719
1192	52	11-610	1212	138	19-303	1226	226	11-206	1238	305	20-402	1251	391	18-720
1192	53	11-620	1213	139	19-311	1226	227	17-101	1238	306	20-403	1251	392	18-721
1192	54	11-621	1213	140	19-312	1227	228	17-103	1238	307	20-404	1251	393	18-722
1192	55	11-622	1214	141	19-313		229	S., U. S. C. title 28, § 309a	1238	308	20-405	1251	394	18-723
1192	56	11-623	1214	142	11-517		230	§ 309a	1238	309	18-401	1252	395	16-207 note
1192	57	11-624	1214	143	11-518		231	11-206	1239	310	18-402	1252	396	45-1502
1192	58	11-607	1214	144	11-519		232	R. '02, 32 Stat. 609, ch. 1352, § 1	1239	311	18-403	1252	397	45-1503
1192	59	11-625	1214	145	11-520		233, 234	Stat. 609, ch. 1352, § 1	1239	312	18-404	1252	398	45-1504
1192	60	11-627	1214	146	18-607			ch. 1352, § 1	1239	313	18-405	1252	399	13-301
1192	61	11-301	1215	147	18-608			11-210, 331	1240	314	18-406	1253	400	13-302
1192	62	11-305	1215	148	18-609			11-208	1240	315	18-407	1253	401	13-303
1192	63	11-309	1215	149	18-610			11-209	1240	316	18-408	1253	402	36-101
1192	64	11-310	1215	150	21-109			S., U. S. C. title 28, § 347	1240	317	18-301	1253	403	36-104
1192	65	11-311	1215	151	21-118			12-101	1240	318	18-302	1253	404	36-105
1192	66	11-312	1215	152	21-106			12-102	1240	319	18-303	1253	405	36-106
1192	67	11-313	1215	153	21-112			12-103	1240	320	18-304	1253	406	36-107
1192	68	11-314	1215	154	21-121			12-104	1241	321	18-305	1253	407	36-108
1192	69	11-315	1215	155	21-122			12-105	1241	322	18-601	1253	408	36-109
1192	70	11-316	1215	156	21-113			12-106	1241	323	18-602	1254	409	36-110
1192	71	11-317	1216	157	21-204			12-107	1241	324	18-603	1254	410	36-111
1192	72	11-318	1216	158	21-205			12-108	1241	325	18-604	1254	411	36-112
1192	73	11-319	1216	159	21-206			12-109	1242	326	18-606	1254	412	16-1701
1192	74-80	S. 17-104	1216	160	21-207			12-110	1242	327	20-501	1254	413	16-1702
1192	81, 82	R. '02, 32 Stat. 523, ch. 1329	1216	161	21-208			12-111	1242	328	20-502	1254	414	16-1703
1202	83	11-322	1217	162	21-209			12-112	1242	329	20-505	1255	415	16-1704
1202	84	11-324	1217	163	21-211			12-113	1243	330	18-503	1255	416	16-1705
1202	85	11-325	1217	164	21-212			12-114	1243	331	18-504	1255	417	16-1706
1202	86	16-1302	1217	165	21-213			12-115	1243	332	18-505	1255	418	16-1707
1202	87	16-1303	1217	166	21-214			12-116	1243	333	18-506	1255	419	16-1708
1202	88	16-1304	1217	167	21-215			12-117	1243	334	18-507	1255	420	16-1709
1202	89	16-1305	1217	168	21-216			12-118	1243	335	18-508	1255	421	16-1710
				169	21-217			12-119	1243	336	18-509	1255	422	16-1711
				170	21-218			12-120	1243	337	18-510	1255	423	16-1712
				171	21-219			12-121	1243	338	18-511	1255	424	16-1713
				172	21-220			12-122	1243	339	18-512	1255	425	16-1714
				173	21-221			12-123	1244	340	R. '02, 32 Stat. 529, ch. 1329			



## CODE OF 1901—Continued

Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940
1256	431	28-2501	1273	535	45-612	1288	631	29-227	1307	732	26-320	1325	832	22-2207
1256	432	28-2502	1273	536	45-613	1288	632	29-228	1307	733	26-321	1325	833	22-1201
1256	433	28-2503	1273	537	45-619	1288	633	29-229	1307	734	26-322	1325	834	22-1202
1256	434	28-2504	1274	538	45-614	1288	634	29-230	1308	735	26-323	1325	835	22-1203
1256	435	28-2601	1274	539	45-615	1288	635	29-231	1308	736	26-324	1325	836	22-1204
1257	436	28-2602	1274	540	R. '02, 32	1288	636	29-232	1308	737	26-325	1325	837	22-1205
1257	437	28-2603			to	1288	637	29-233	1308	738	26-326	1325	838	22-1206
1257	438	28-2604			Stat. 533,	1288	638	29-234	1308	739	26-327	1326	839	22-1209
1257	439	28-2605	1274	544	ch. 1329	1288	639	29-235	1308	740	26-328	1326	840	22-1405
1258	440	28-2606	1274	545	45-617	1288	640	29-236	1308	741	26-329	1326	841	22-1210
1258	441	28-2607	1275	546	42-101, 102	1289	641	26-302;	1308	742	26-330	1326	842	22-1301
1258	442	28-2608	1275	547	42-103			29-237	1309	743	26-331	1326	843	22-1401
1258	443	28-2609	1275	548	45-701	1289	642	44-101	1309	744	26-332	1327	844	22-3107
1258	444	28-2610	1275	549	45-702	1289	643	44-102	1309	745	26-333	1327	845	22-1308
1258	445	16-301	1276	550	45-704	1289	644	44-103	1309	746	26-334	1327	846	22-3119
1259	446	16-302	1276	551	45-706	1289	645	35-101	1309	747	26-335	1327	847	22-3108
1259	447	16-303	1276	552	45-708	1290	646	35-102	1309	748	26-336	1327	848	22-403
1259	448	16-304	1276	553	S. 45-703,	1290	647	35-103	1310	749	35-901	1327	849	22-3106
1260	449	16-305			709; S. U.	1290	648	35-201	1310	750	35-902	1327	850	22-3114
1260	450	16-306			S. C. title	1291	649	35-104	1310	751	35-903	1327	851	22-3101
1260	451	16-307			5, § 673	1291	650	35-105	1311	752	35-904	1328	852	22-1102
1260	452	16-308	1276	554	R. '02, 32	1292	651	35-106	1312	753	35-905	1328	853	22-1103
1260	453	16-309			Stat. 533,	1292	652	35-108	1312	754	35-906	1328	854	22-1104
1261	454	16-310			ch. 1329	1292	653	35-202	1313	755	35-907	1328	855	R. '32, 47
1261	455	16-311	1276	555	45-503	1292	654	35-1201	1313	756	35-908			to
1262	456	16-312	1277	556	45-505	1293	655	35-1202	1314	757	35-909			Stat. 654,
1262	457	16-313	1277		45-301	1294	656	35-1133	1314	758	35-910	1329	858	§ 17
1262	458	16-314				1294	657	35-203	1314	759	35-911	1330	859	22-2501
1262	459	16-315	1279	557	1-401	1294	658	27-101	1314	760	35-912	1330	860	22-1303
1262	460	16-316	1279	558	1-501	1294	659	27-102	1315	761	35-913	1330	861	22-1304
1262	461	16-317	1279	559	1-402, 502	1294	660	27-103	1315	762	35-914	1330	862	22-701
1262	462	16-318	1279	560	1-503	1294	661	27-104	1315	763	35-915	1330	863	22-703
1263	463	16-319	1279	561	1-504	1294	662	27-106	1316	764	35-916	1330	864	22-1501
1263	464	16-320	1279	562	1-505	1294	663	27-107	1316	765	35-917	1331	865	22-1503
1263	465	16-321	1279	563	1-506	1295	664	27-108	1316	766	29-101	1331	866	22-1504
1263	466	16-322	1279	564	1-507	1295	665	27-109	1316	767	29-102	1331	867	22-1505
1263	467	16-323	1279	565	1-508	1295	666	27-110	1316	768	29-103	1331	868	22-1506
1263	468	16-324	1279	566	1-510	1295	667	27-111	1317	769	29-104	1331	869	22-1507
1263	469	16-325	1279	567	1-509	1295	668	27-112	1317	770	29-105	1331	870	22-1508
1264	470	16-326	1280	568	1-511	1295	669	27-113	1317	771	29-106	1331	871	22-601
1264	471	16-327	1280	569	1-512	1295	670	27-114	1317	772	29-107	1331	872	22-3002
1264	472	16-328	1280	570	1-513	1295	671	27-115	1317	773	29-108	1332	873	22-2001
1264	473	16-329	1280	571	1-514	1295	672	27-116	1317	774	29-109	1332	874	22-3001
1264	474	16-330	1280	572	1-515	1296	673	27-117	1318	775	29-110	1332	875	22-301
1264	475	16-331	1280	573	1-516	1296	674	27-118	1318	776	29-111	1332	876	22-1901
1264	476	16-332	1280	574	29-401	1296	675	27-119	1318	777	29-112			S. 22-1105,
1264	477	16-334	1281	575	29-402	1296	676	27-120	1318	778	29-113	1333	877	1166
1264	478	28-2401	1281	576	29-403	1297	677	27-121	1318	779	29-114	1333	878	48-101
1265	479	28-2402	1281	577	29-404	1297	678	27-122	1318	780	29-115	1333	879	48-102
1265	480	28-2405	1281	578	29-405	1297	679	27-123	1318	781	29-116	1333	880	22-1402
1265	481	28-2406	1281	579	29-406	1297	680	27-124	1319	782	29-117	1333	881	22-3109
1265	482	28-2407	1281	580	29-407	1297	681	27-125	1319	783	29-118	1333	882	9-106
1265	483	16-601	1281	581	29-408	1298	682	27-126	1319	784	29-119	1333	883	9-107
1265	484	16-602	1281	582	29-409	1298	683	27-127	1319	785	29-120	1333	884	9-108
1265	485	16-604	1281	583	29-410	1298	684	27-128	1319	786	29-121	1333	885	9-109
1266	486	16-606	1282	584	29-411	1298	685	27-129	1319	787	29-122	1333	886	9-110
1266	487	16-607	1282	585	29-412	1298	686	26-401	1319	788	29-123	1333	887	9-111
1266	488	16-608	1282	586	29-413	1298	687	26-402	1320	789	29-124	1334	888	9-112
1266	489	16-609	1282	587	29-501	1299	688	26-403	1320	790	29-125	1334	889	9-113
1266	490	16-610	1282	588	29-502	1299	689	26-404	1320	791	29-126	1334	890	9-114
1266	491	16-611	1282	589	29-503	1299	690	26-405	1320	792	29-127	1334	891	9-115, 116
1267	492	45-106	1282	590	29-504	1299	691	26-406			R. '02, 32	1334	892	22-3103
1267	493	45-107	1282	591	29-505	1299	692	26-407			Stat. 534,	1334	893	22-3407
1267	494	30-216	1282	592	29-506	1299	693	26-408	1320	793	ch. 1329	1334	894	22-3408
1267	495	45-403	1283	593	29-507	1299	694	26-409	1320	794	29-725	1335	895	Temporary
1268	496	45-404	1283	594	29-508	1300	695	26-410	1320	795	29-726	1335	896	22-1701
1268	497	45-302	1283	595	29-509	1300	696	26-411	1321	796	29-727	1335	897	22-1601
1268	498	45-401	1283	596	29-510	1300	697	26-412	1321	797	29-728	1336	898	22-1602
1268	499	45-501	1283	597	29-511	1300	698	26-413	1321	798	29-729	1336	899	22-1604
1268	500	45-502	1283	598	29-512	1300	699	26-414	1321	799	22-2401	1336	900	22-1605
1268	501	45-505	1283	599	29-601	1300	700	26-415	1321	800	22-2402	1336	901	22-1606
1268	502	45-201	1284	600	29-602	1301	701	26-416	1321	801	22-2403	1336	902	22-1703
1268	503	45-202	1284	601	29-603	1301	702	29-301	1321	802	22-2404	1336	903	22-1607, 1703
1268	504	45-205	1284	602	29-604	1301	703	29-302	1321	803	22-2405	1336	904	22-1608
1268	505	45-303	1284	603	29-605	1301	704	29-303	1321	804	22-501	1336	905	22-101
1269	506	45-304	1284	604	29-606	1301	705	29-304	1322	805	22-502	1336	906	22-102
1269	507	45-305	1284	605	29-201	1301	706	29-305	1322	806	22-503	1337	907	22-103
1269	508	45-306	1285	606	29-202	1301	707	29-306	1322	807	22-504	1337	908	22-104
1269	509	45-307	1285	607	29-203	1301	708	29-307	1322	808	22-506	1337	909	22-105
1269	510	45-308	1285	608	29-204	1301	709	29-308	1322	809	22-2801	1337	910	22-106
1269	511	R. '02, 32	1285	609	29-205	1302	710	44-211	1322	810	22-201	1337	911	22-107
		Stat. 532,	1285	610	29-206	1302	711	44-212	1322	811	22-2801	1338	912	22-301
		ch. 1329	1285	611	29-207	1302	712	26-101	1322	812	22-2902	1338	913	22-302
1269	512	45-101	1285	612	29-208	1302	713	26-102	1322	813	22-2101	1338	914	22-303
1269	513	45-105	1286	613	29-209	1303	714	26-103	1322	814				



## CODE OF 1901—Continued

Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940
1340	932	3-101 to 303; 23-101	1352	1034	45-820	1370	1132	21-120	1383	1232	S. 17-104	1399	1331	28-204
1341	933	23-102	1352	1035	45-821	1370	1133	21-124	1383	1233	S. 17-104	1399	1332	28-205
1341	934	23-103;	1352	1036	45-822, 823	1370	1134	21-125	1384	1234	45-932	1399	1333	28-206
		24-401	1353	1037	45-1001	1370	1135	21-126	1384	1235	45-909	1399	1334	28-207
1341	935	23-105	1353	1038	45-1002	1371	1136	21-128	1384	1236	45-908	1399	1335	28-208
1341	936	24-404	1353	1039	45-1003	1371	1137	21-127	1384	1237	38-101	1399	1336	28-209
1341	937	24-405	1353	1040	45-1004	1371	1138	21-123	1384	1238	38-102	1399	1337	28-210
1341	938	23-106	1353	1041	45-1005	1371	1139	21-130	1384	1239	38-103	1399	1338	28-211
1342	939	23-104	1353	1042	45-1006	1371	1140	21-114	1384	1240	38-104	1400	1339	28-212
1342	940	18-101	1353	1043	45-1007	1371	1141	21-115	1385	1241	38-105	1400	1340	28-213
1342	941	R. '35, 49	1353	1044	45-1008	1371	1142	21-116	1385	1242	38-106	1400	1341	28-214
	951	Stat. 39 ch. 28, § 3	1353	1045	45-1009	1372	1143	16-801	1385	1243	38-107	1400	1342	28-215
		(B)	1353	1046	45-1010	1372	1144	16-802	1385	1244	38-108	1400	1343	28-216
			1353	1047	45-1011	1372	1145	16-803	1385	1245	38-109	1400	1344	28-217
1343	952	18-102	1353	1048	45-1012	1372	1146	16-804	1386	1246	38-110	1400	1345	28-218
1343	953	18-103	1354	1049	45-1013	1372	1147	16-805	1386	1247	38-111	1400	1346	28-219
1343	954	18-104	1354	1050	45-1014	1373	1148	16-806	1386	1248	38-112	1400	1347	28-220
1343	955	18-105	1354	1051	45-1015	1373	1149	16-807	1386	1249	38-113	1400	1348	28-221
1343	956	45-817	1354	1052	45-1016	1373	1150	16-808	1386	1250	38-114	1400	1349	28-222
1344	957	18-106	1354	1053	45-1017	1373	1151	30-207	1387	1251	38-115	1401	1350	28-223
1344	958	18-107	1354	1054	45-1018	1373	1152	30-205	1387	1252	38-116	1401	1351	28-224
1344	959	18-108	1354	1055	45-1019	1374	1153	30-204	1387	1253	38-117	1401	1352	28-225
1344	960	18-110	1354	1056	14-101	1374	1154	30-201	1387	1254	38-118	1401	1353	28-226
1344	961	18-109	1354	1057	14-102	1374	1155	30-208	1387	1255	38-119	1401	1354	28-227
1344	962	18-111	1354	1058	14-201	1374	1156	30-209	1387	1256	38-120	1401	1355	28-228
1345	963	16-416	1356	1059	14-202	1375	1157	30-203	1387	1257	38-121	1401	1356	28-229
1345	964	16-419	1356	1060	14-203	1375	1158	18-202	1388	1258	38-122	1401	1357	28-230
1345	965	16-402	1356	1061	14-103	1375	1159	18-215	1388	1259	38-123	1401	1358	28-231
1345	966	16-403	1357	1062	14-204	1375	1160	R. '20, 41	1388	1260	38-124	1401	1359	28-232
1345	967	16-420	1357	1063	14-301			Stat. 567,	1388	1261	34-103	1401	1360	28-233
1345	968	16-403 note	1357	1064	14-302			ch. 153, § 1	1388	1262	38-201	1401	1361	28-234
1345	969	16-404	1357	1065	14-303	1375	1161	30-212	1388	1263	34-104;	1402	1362	28-235
1345	970	16-405	1357	1066	14-304	1375	1162	30-213			38-125,	1402	1363	28-236
1345	971	16-401	1358	1067	14-305	1375	1163	30-214			202	1402	1364	28-237
1346	972	16-406	1358	1068	14-306	1375	1164	30-215	1388	1264	34-105;	1402	1365	28-238
1346	973	16-407	1358	1069	14-307	1375	1165	18-204			38-126, 203	1402	1366	28-239
1346	974	16-408	1358	1070	14-401	1376	1166	30-210	1389	1265	12-201	1402	1367	28-240
1346	975	16-410	1358	1071	14-402	1376	1167	R. '02, 32	1389	1266	12-202	1402	1368	28-241
1346	976	16-411	1358	1072	14-405	1376	1168	Stat. 542,	1389	1267	12-203	1402	1369	28-242
1346	977	16-412	1358	1073	14-308			ch. 1329	1389	1268	12-204	1403	1370	28-243
1346	978	16-413	1358	1074	15-201	1376	1169	45-913	1389	1269	12-205	1403	1371	28-244
1346	979	16-414	1358	1075	15-202	1376	1170	30-202	1389	1270	12-206	1403	1372	28-245
1346	980	16-415	1359	1076	15-203	1376	1171	30-206	1390	1271	12-305, 306	1403	1373	28-246
1346	981	16-422	1359	1077	15-204	1376	1172	18-210	1390	1272	12-207	1403	1374	28-247
1347	982	16-418	1359	1078	15-205	1376	1173	18-211	1390	1273	16-1001	1403	1375	28-248
1347	983	16-417	1359	1079	15-206	1377	1174	18-212	1390	1274	16-1002	1403	1376	28-249
1347	984	16-501	1359	1080	15-208	1377	1175	18-213	1390	1275	16-1003	1403	1377	28-250
1347	985	16-503	1359	1081	15-209	1377	1176	18-214	1390	1276	16-1004	1404	1378	28-251
1347	986	16-504	1359	1082	15-210	1377	1177	30-211	1390	1277	16-1005	1404	1379	28-252
1347	987	R. '02, 32	1359	1083	15-211	1377	1178	28-2701	1390	1278	16-1006	1404	1380	28-253
		Stat. 537,	1359	1084	15-212	1377	1179	28-2702	1391	1279	16-1007	1404	1381	28-254
		ch. 1329	1359	1085	15-214	1377	1180	28-2703	1391	1280	16-1008	1404	1382	28-255
1347	988	16-505	1359	1086	15-301	1377	1181	28-2704	1391	1281	16-1009	1404	1383	28-256
1347	989	16-506	1360	1087	15-302	1378	1182	28-2705	1391	1282	16-1010	1404	1384	28-257
1348	990	16-507	1360	1088	15-303	1378	1183	28-2706	1391	1283	30-101	1404	1385	28-258
1348	991	R. '02, 32	1360	1089	15-304	1378	1184	28-2707	1391	1284	30-102	1404	1386	28-259
		Stat. 537,	1360	1090	15-305	1378	1185	28-2708	1391	1285	30-103	1404	1387	28-260
		ch. 1329	1360	1091	15-306	1378	1186	28-2709	1392	1286	30-104	1404	1388	28-261
1348	992	16-508		R. '02, 32	1378	1187 to	1190	S. 24-407,	1392	1287	30-105	1404	1389	28-262
1348	993	16-509		Stat. 541,				411 note	1392	1288	30-106	1405	1390	28-263
1348	994	16-510	1360	ch. 1329	1379	1191	1191	24-415	1392	1289	30-107	1405	1391	28-264
1348	995	16-511	1360		1379	1192	1192	24-412	1392	1290	30-108	1405	1392	28-265
1348	996	16-512	1360		1379	1193	1193	24-413	1392	1291	30-110	1405	1393	28-266
1348	997	16-513	1360		1379	1194	1194	24-414	1392	1292	30-111	1405	1394	28-267
1349	998	16-514	1361		1379	1195	1195	S. 3-107;	1392	1293	30-112	1405	1395	28-268
1349	999	16-515, 1501	1361		1379	1196	1196	S. 24-411	1393	1294	30-113	1405	1396	28-269
		note	1361		1379	1197	1197	S. 3-108	1393	1295	30-114	1405	1397	28-270
1349	1000	16-516		R. '02, 32	1379	1197	1197	24-416	1393	1296	30-116	1405	1398	28-271
1349	1001	16-517		Stat. 541,	1379	1198	1198	S. 24-417	1394	1297	30-117	1405	1399	28-272
1349	1002	16-518	1361	ch. 1329	1379	1199	1199	S. 23-701	1394	1298	16-1101	1405	1400	28-273
1349	1003	16-519	1361		1379	1200	1200	S. 23-706	1394	1299	16-1102	1406	1401	28-274
1350	1004	16-520	1361		1379	1201	1201	S. 23-704	1394	1300	16-1103	1406	1402	28-275
1350	1005	16-521	1362		1379	1202	1202	S. 23-704	1394	1301	16-1201	1406	1403	28-276
1350	1006	16-522	1362		1379	1203	1203	23-705	1394	1302	16-1202	1406	1404	28-277
1350	1007	16-523	1362		1380	1204	1204	24-421	1395	1303	16-1203	1406	1405	28-278
1350	1008	16-524	1362		1380	1205	1205	16-901	1395	1304	28-101	1406	1406	28-279
1350	1009	16-525	1363		1380	1206	1206	16-902	1395	1305	28-102	1406	1407	28-280
1350	1010	16-526	1363		1380	1207	1207	16-903	1395	1306	28-103	1406	1408	28-281
1350	1011	45-801	1363		1380	1208	1208	16-904	1396	1307	28-104	1406	1409	28-282
1350	1012	45-802	1363		1380	1209	1209	16-905	1396	1308	28-105	1406	1410	28-283
1351	1013	45-803	1364		1380	1210	1210	16-906	1396	1309	28-106	1406	1411	28-284
1351	1014	45-804	1365		1381	1211	1211	13-401	1396	1310	28-107	1406	1412	



## CODE OF 1901—Continued

Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940	Page	Section	D. C. 1940
1409	1433	28-904	1413	1477	28-949	1417	1521	41-124	1423	1565	16-1903	1428	1605	7-306
1409	1434	28-905	1413	1478	28-950	1417	1522	41-125	1423	1566	16-1904	1428	1606	7-307
1409	1435	28-906	1413	1479	28-951	1417	1523	41-126	1423	1567	16-1905	1429	1607	7-308
1409	1436	28-907	1413	1480	28-952	1417	1524	41-127	1423	1568	16-1906	1429	1608	7-309
1409	1437	28-908	1413	1481	28-953	1417	1525	41-128	1423	1569	16-1907	1430	1609	7-322
1409	1438	28-909	1413	1482	28-954	1417	1526	41-129	1423	1570	16-1908	1430	1610	7-323
1409	1439	28-910	1413	1483	28-955	1417	1527	41-130	1424	1571	16-1909	1430	1611	7-325
1409	1440	28-911	1413	1484	28-956	1418	1528	41-131	1424	1572	16-2001	1431	1612	7-326
1409	1441	28-912	1413	1485	28-957	1418	1529	16-1401	1424	1573	16-2002	1431	1613	7-327
1410	1442	28-913	1414	1486	28-958	1418	1530	16-1402	1424	1574	1-605	1431	1614	7-328
1410	1443	28-914	1414	1487	28-959	1418	1531	13-217	1424	1575	1-611	1431	1615	7-329
1410	1444	28-915	1414	1488	28-1001	1418	1532	13-208	1424	1576	R. '02, 32	1431	1616	7-330
1410	1445	28-916	1414	1489	28-1002	1418	1533	13-209			Stat. 544,	1432	1617	45-1201
1410	1446	28-917	1414	1490	28-1003	1419	1534	13-211			ch. 1329	1432	1618	45-1203
1410	1447	28-918	1414	1491	28-1005	1419	1535	13-213	1424	1577	1-601	1432	1619	S. 28-1921
1410	1448	28-919	1414	1492	28-1006	1419	1536	13-101	1424	1578	1-602		1620	to 1930
1410	1449	28-921	1414	1493	28-1007	1419	1537	13-103	1425	1579	1-603	1432	1621	28-1918
1411	1450	28-922	1414	1494	41-201	1419	1538	16-1601	1425	1580	1-610	1433	1622	45-1304
1411	1451	28-923	1414	1495	41-202	1420	1539	16-1602	1425	1581	1-620	1433	1623	19-201
1411	1452	28-924	1414	1496	41-203	1420	1540	16-1603	1425	1582	1-621	1433	1624	R. '02, 32
1411	1453	28-925	1415	1497	41-204	1420	1541	16-1604	1425	1583	1-622			Stat. 545,
1411	1454	28-926	1415	1498	41-101	1420	1542	16-1605	1425	1584	1-623			ch. 1329
1411	1455	28-927	1415	1499	41-102	1420	1543	16-1606	1425	1585	1-624	1433	1625	19-101
1411	1456	28-928	1415	1500	41-103	1420	1544	16-1607	1425	1586	1-625	1433	1626	19-103
1411	1457	28-929	1415	1501	41-104	1420	1545	16-1608	1426	1587	1-626	1433	1627	19-108
1412	1458	28-930	1415	1502	41-105	1420	1546	16-1609	1426	1588	1-627	1433	1628	19-205
1412	1459	28-931	1415	1503	41-106	1420	1547	16-1610	1426	1589	1-628	1434	1629	19-107
1412	1460	28-932	1415	1504	41-107	1421	1548	16-1611	1426	1590	1-617	1434	1630	19-109
1412	1461	28-933	1415	1505	41-108	1421	1549	16-1801	1426	1591	1-616	1434	1631	19-110
1412	1462	28-934	1416	1506	41-109	1421	1550	16-1802	1426	1592	1-604	1434	1632	19-204
1412	1463	28-935	1416	1507	41-110	1421	1551	16-1803	1426	1593	1-629	1434	1633	19-203
1412	1464	28-936	1416	1508	41-111	1421	1552	16-1804	1426	1594	1-612	1434	1634	19-102
1412	1465	28-937	1416	1509	41-112	1421	1553	16-1805	1427	1595	1-618	1434	1635	19-202
1412	1466	28-938	1416	1510	41-113	1421	1554	16-1806	1427	1596	1-607	1434	1636	14-308;
1412	1467	28-939	1416	1511	41-114	1421	1555	16-1807	1427	1597	R. '35, 49			49-304 note
1412	1468	28-940	1416	1512	41-115	1421	1556	16-1808			Stat. 431,	1435	1637	49-304 note
1412	1469	28-941	1416	1513	41-116	1422	1557	16-1809			ch. 332, § 4	1435	1638	49-304 note
1412	1470	28-942	1416	1514	41-117	1422	1558	16-1810	1427	1598	1-619	1436	1639	49-304 note
1412	1471	28-943	1416	1515	41-118	1422	1559	16-1811	1427	1599	1-606	1436	1640	49-304 note
1413	1472	28-944	1416	1516	41-119	1422	1560	16-1812	1427	1600	1-608	1436	1641	49-304 note
1413	1473	28-945	1416	1517	41-120	1422	1561	16-1813	1427	1601	1-613	1436	1642	49-304 note
1413	1474	28-946	1416	1518	41-121	1422	1562	16-1814	1428	1602	1-614	1436	1643	49-304 note
1413	1475	28-947	1417	1519	41-122	1422	1563	16-1901	1428	1603	1-615			
1413	1476	28-948	1417	1520	41-123	1423	1564	16-1902	1428	1604	7-125			



# CODE OF 1929 AND SUPPLEMENT

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 1:</b>		<b>Title 5:</b>		<b>Title 5:</b>		<b>Title 5:</b>		<b>Title 5:</b>	
1	49-101	74	27-104	196	35-1113	218//	35-539	300d	26-109
2	49-102	75	27-105	197	35-1114	218mm	35-540	301	29-238
3	49-103	76	27-106	198	35-1115	219	35-601	302	29-239
4	49-104	77	27-107	199	35-1116	219a	35-602	303	29-240
5	49-105	78	27-108	200	35-1117	220	35-701	304	26-110
6	49-106	79	27-109	201	35-1118	220a	35-702	311	29-501
7	49-107	80	27-110	202	35-1119	220b	35-703	312	29-502
8	49-108	81	27-111	203	35-1120	220c	35-704	313	29-503
9	49-109	82	27-112	204	35-1121	220d	35-705	314	29-504
11	49-201	83	27-113	205	35-1122	220e	35-706	315	29-505
12	49-202	84	27-114	206	35-1123	220f	35-707	316	29-506
13	49-203	85	27-115	207	35-1124	220g	35-708	317	29-507
14	49-204	86	27-116	208	35-1125	220h	35-709	318	29-508
15	49-205	87	27-117	209	35-1126	220i	35-710	319	29-509
16	49-206	88	27-118	210	35-1127	220j	35-711	320	29-510
17	49-207	89	27-119	211	35-1128	220k	35-712	321	29-511
21	49-301	90	27-120	212	35-1129	220l	35-713	322	29-512
22	49-302	91	27-121	213	35-1130	220m	35-714	323	29-513
23	49-303	92	27-122	214	35-1131	220n	35-715	324	29-514
<b>Title 2:</b>		93	27-123	215	35-1132	220o	35-716	325	29-515
1	28-2501	94	27-124	216	35-301	220p	35-717	326	29-516
2	28-2502	95	27-125	216a	35-302	220q	35-718	331	44-211
3	28-2503	96	27-126	217	35-401	220r	35-719	332	44-210
4	28-2504	97	27-127	217a	35-402	220s	35-720	333	44-212
21	28-2601	98	27-128	217b	35-403	220t	35-721	341	26-301
22	28-2602	121	29-601	217c	35-404	221	35-801	342	26-302
23	28-2603	122	29-602	217d	35-405	221a	35-802	342a	26-303
24	28-2604	123	29-603	217e	35-406	221b	35-803	343	26-304
25	28-2605	124	29-604	217f	35-407	221c	35-801 note	344	26-305
26	28-2606	125	29-605	217g	35-408	231	29-401	345	26-306
27	28-2607	126	29-606	217h	35-409	232	29-402	346	26-307
28	28-2608	141	35-901	217i	35-410	233	29-403	347	26-308
29	28-2609	142	35-902	217j	35-411	234	29-404	348	26-309
30	28-2610	143	35-903	217k	35-412	235	29-405	349	26-310
<b>Title 3:</b>		144	35-904	217l	35-413	236	29-406	350	26-311
1	28-2401	145	35-905	217m	35-414	237	29-407	351	26-312
2	28-2402	146	35-906	217n	35-415	238	29-408	352	26-313
3	28-2403	147	35-907	217o	35-416	239	29-409	353	26-314
4	28-2404	148	35-908	217p	35-417	240	29-410	354	26-315
5	28-2405	149	35-909	217q	35-418	241	29-411	355	26-316
6	28-2406	150	35-910	217r	35-419	242	29-412	356	26-317
7	28-2407	151	35-911	217s	35-420	243	29-413	357	26-318
<b>Title 4:</b>		152	35-912	217t	35-421	244	29-414	358	26-319
1	1-401	153	35-913	217u	35-422	245	29-415	359	26-320
2	1-402	154	35-914	217v	35-423	246	29-416	360	26-321
11	1-501	155	35-915	217w	35-424	247	29-417	361	26-322
12	1-502	156	35-916	217x	35-425	248	29-418	362	26-323
13	1-503	157	35-917	217y	35-426	249	29-419	363	26-324
14	1-504	161	35-918	217z	35-427	261	29-201	364	26-325
15	1-505	162	35-919	217aa	35-428	262	29-202	365	26-326
16	1-506	163	35-920	217bb	35-429	263	29-203	366	26-327
17	1-507	164	35-921	217cc	35-430	264	29-204	367	26-328
18	1-508	165	35-922	217dd	35-431	265	29-205	368	26-329
19	1-509	166	35-923	217ee	35-432	266	29-206	369	26-330
20	1-510	167	35-924	218	35-501	267	29-207	370	26-331
21	1-511	168	35-925	218a	35-502	268	29-208	371	26-332
22	1-512	169	35-926	218b	35-503	269	29-209	372	26-333
23	1-513	170	35-927	218c	35-504	270	29-210	373	26-334
24	1-516	170a	35-928	218d	35-505	271	29-211	374	26-335
<b>Title 5:</b>		171	35-101	218e	35-506	272	29-212	375	26-336
1	29-101	172	35-102	218f	35-507	273	29-213	381	26-501
2	29-102	173	35-103	218g	35-508	274	29-214	382	26-502
3	29-103	174	35-201	218h	35-509	275	29-215	383	26-503
4	29-104	175	35-104	218i	35-510	276	29-216	384	26-504
5	29-105	176	35-105	218j	35-511	277	29-217	385	26-505
21	29-301	177	35-106	218k	35-512	278	29-218	386	26-506
22	29-302	177a	35-107	218l	35-513	279	29-219	387	26-507
23	29-303	178	35-108	218m	35-514	280	29-220	388	26-508
24	29-304	179	35-202	218n	35-515	281	29-221	389	26-509
25	29-305	180	35-1201	218o	35-516	282	29-222	390	26-510
26	29-306	181	35-1202	218p	35-517	283	29-223	390a	26-511
27	29-307	181a	35-1001	218q	35-518	284	29-224	390b	26-512
28	29-308	181b	35-1002	218r	35-519	285	29-225	390c	26-513
41	26-401	181c	35-1003	218s	35-520	286	29-226	390d	26-514
42	26-402	181d	35-1004	218t	35-521	287	29-227	390e	26-515
43	26-403	181e	35-1005	218u	35-522	288	29-228	390f	26-516
44	26-404	182	35-1133	218v	35-523	289	29-229	390g	26-517
45	26-405	183	35-203	218w	35-524	290	29-230	390h	26-518
46	26-406	183a	35-204	218x	35-525	291	29-231	391	29-701
47	26-407	183b	35-205	218y	35-526	292	29-232	392	29-702
48	26-408	184	35-1101	218z	35-527	293	29-233	393	29-703
49	26-409	185	35-1102	218aa	35-528	294	29-234	394	29-704
50	26-410	186	35-1103	218bb	35-529	295	29-235	395	29-705
51	26-411	187	35-1104	218cc	35-530	296	29-236	396	29-706
52	26-412	188	35-1105	218dd	35-531	297	29-237	397	29-707
53	26-413	189	35-1106	218ee	35-532	298	26-101	398	29-708
54	26-414	190	35-1107	218ff	35-533	299	26-102	399	29-709
55	26-415	191	35-1108	218gg	35-534	300	26-103	400	29-710
56	26-416	192	35-1109	218hh	35-535	300a	26-104; R. 26-104 note.1	401	29-711
71	27-101	193	35-1110	218ii	35-536			402	29-712
72	27-102	194	35-1111	218jj	35-537	300b		403	29-713
73	27-103	195	35-1112	218kk	35-538	300c		404	29-714

1 Repealed in part.



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 5:</b>		<b>Title 6:</b>		<b>Title 6:</b>		<b>Title 6:</b>		<b>Title 6:</b>	
405	29-715	114	R. '32, 47	223	22-1623	310	22-3120	410	24-410
406	29-716	to	Stat. 654.	224	22-1624	311	22-3121	411	24-411
407	29-717	116	ch. 465, § 17	225	R. '32, 47	312	22-3122	412	24-412
408	29-718	116a	22-3201		Stat. 661.	313	22-3401	413	24-413
409	29-719	116b	22-3202		ch. 478, § 2	314	22-3402	414	24-414
410	29-720	116c	22-3203	226	22-1625	315	22-3403	415	24-415
411	29-721	116d	22-3204	227	22-1626	316	22-3413	416	24-416
412	29-722	116e	22-3205	228	22-1627	317	22-2602	417	24-417
413	29-723	116f	22-3206	241	40-601	318	22-1111	418	23-701
414	29-724	116g	22-3207	242	40-602	319 to 330	R. '33, 48 Stat.	419	23-702
415	29-725	116h	22-3208	243	40-603		28, ch. 19, § 12	420	23-703
416	29-726	116i	22-3209	243a	40-604	331	S. 25-128	421	23-704
417	29-727	116j	22-3210	244	40-301	332 to 339	R. '33, 48 Stat.	422	23-705
418	29-728	116k	22-3211	245	40-303		28, ch. 19, § 12	423	23-706
419	29-729	116l	22-3212	245a	40-302(c)	340	S. 25-127	424	24-101
		116m	22-3213	246	40-605	341 to 344	R. '33, 48 Stat.	425	24-102
<b>Title 6:</b>		116n	22-3214	246a	40-606		28, ch. 19, § 12	426	24-103
1	22-101	116o	22-3215	246b	40-607	345	33-401	427	24-104
2	22-102	116p	22-5216	246c	40-608	345a	33-402	428	24-105
3	22-103		22-1107		40-609	345b	33-403	429	24-418
4	22-104		22-1110		40-610	345c	33-404	430	24-419
5	22-105		22-1114		40-611	345d	33-405	431	24-420
6	22-106		22-1115		40-392	345e	33-406	432	24-421
7	22-107		22-1116	250a	40-612	345f	33-407	433	24-422
8	22-108		22-2501	251	R. '31, 46 Stat.	345g	33-408	434	24-423
21	22-2401		22-1303		1426, ch. 317	345h	33-409	435	24-424
22	22-2402		22-1304		§ 4	345i	33-410	451	24-201
23	22-2403		22-701	252	40-613	345j	33-411	452	24-202
24	22-2404		22-702	253	40-615	345k	33-412	453	24-203
25	22-2405		22-703	254	40-617	345l	33-413	454	24-204
26	22-501		22-2601	255	40-401	345m	33-414	455	24-205
27	22-502		22-704	255a	40-402	345n	33-415	456	24-206
28	22-503		22-1501	255b	40-403	345o	33-416	457	24-207
29	22-504		22-1502	255c	40-404	345p	33-417	458	24-208
30	22-505	151a	22-1503	255d	40-405	345q	33-418	459	24-209
31	22-506	152	22-1504	255e	40-406	345r	33-419	481	23-501
32	22-2801	153	22-1505	255f	40-407	345s	33-420	482	23-502
33	22-201	154	22-1506	255g	40-408	345t	33-421	483	23-503
34	22-2901	155	22-1507	255h	40-409	345u	33-422	484	23-504
35	22-2902	156	22-1508	255i	40-410	345v	33-423		
36	22-2101	157	22-1509	255j	40-411	345w	33-424	<b>Title 7:</b>	
37	22-901	158	22-1510	255k	40-412	345x	33-425	1	31-101
38	22-2301	159	22-1511	255l	40-413	345y		2	31-102
39	22-2302	160	22-1512	255m	40-414	345z		3	31-103
40	22-2303	161	22-3409	255n	40-415	351	23-101	4	31-104
41	22-2304	162	22-3410	255o	40-416	352	23-102	5	31-105
42	22-2305	162a	22-3411	256	40-201	353	23-103	5a	31-106
43	22-1101	162b	22-3412	256a	40-202	354	23-104	5b	31-107
44	22-507	162c	22-1407	256b	40-203	355	23-105	6	31-108
51	22-401	163	22-1408	256c	40-204	356	23-106	7, 8	31-109 note
52	22-402	163a	22-1409	256d	40-205	357	23-301	9	31-110
53	22-403	163b	22-601	256e	40-206	358	23-302	10	31-111
54	22-404	171	22-3001	256f	40-207	359	23-303	11	31-112
55	22-1801	172	22-3002	261	22-3404	360	23-304	12	31-113
56	22-3101	173	22-2001	262	22-3405	360a	23-305	13	31-114
57	22-3102	174	22-301	263	22-3406	361	23-201	14	31-115
58	22-3104	175	22-1901	264	22-1410	362	23-202	15	31-116
59	22-3105	176	22-1001	265	22-1411	363	23-203	16	31-117
60	22-2201	176a		266	22-1412	364	23-204	17	31-118
61	22-2202	177	R. '35, 49	267	22-1413	365	23-205	31	31-610
62	22-2204		Stat. 651.	268	22-3414	366	23-206	31a	31-611
63	22-3106		ch. 546, § 4	269	22-3103	367	23-107	31b	31-612
64	22-2205	177a	22-2701	270	22-902	368	23-108	31c	31-613
65	22-2206	177b	22-2702	271	22-903	369	23-109	31d	31-614
66	22-2207	177c	22-2703	272	22-904	370	23-110	31e	31-615
67	22-2208	178	22-2704	273	22-905	371	23-111	31f	31-616
68	22-1403	179	22-2705	274	22-906	372	23-112	32	31-617
69	22-1404	180	22-2706	275	22-801	373	23-113	33	31-618
70	22-1405	181	22-2707	276	22-802	374	23-114	34	31-619
71	22-1406	182	22-2708	277	22-803	375	24-301	34a	31-620
72	22-3115	183	22-2709	278	22-804	376	24-302	35	31-621
73	22-3116	184	22-2710, 2713	279	22-805	377	24-303	35a	31-622
74	22-3117	185	22-2711, 2714	280	22-806	378	23-401	35b	31-623
74a	22-3118	186	22-2712, 2715	281	22-807	379	23-402	35c	31-624
75	22-1201	187	22-2716	282	22-808	380	23-403	36	31-626
76	22-1202	188	22-2717	283	22-809	381	23-404	37	31-627
77	22-1203	189	22-2718	284	22-810	382	23-405	38	31-628
78	22-1204	190	22-2719	285	22-811	383	23-406	39	31-629
79	22-1205	191	22-2720	286	22-812	384	23-407	40	31-119
80	22-1206	192	22-2721	287	22-813	385	23-408	41	31-109
81	22-1208	193	22-2722	288	22-814	386	23-409	42	31-601
82	22-1209	201	22-1601	289	22-1109	387	23-410	43	31-602
83	22-1210	202	22-1602	290	22-1117	388	23-601	44	31-603
84	22-1211	203	22-1603	291	22-1112	389	23-602	45	31-604
85	22-1301	204	22-1604	292	22-3301	390	23-603	46	31-605
86	22-1401	205	22-1605	293	22-1113	391	23-604	47	31-606
87	22-3107	206	22-1606	294	22-1118	392	23-605	48	31-607
88	22-1308	207	22-1607	295	22-1108	393	23-606	49	31-608
89	22-1302	208	22-1608	296	22-109	394	23-607	50	31-609
90	22-3119	209	22-1609	297	22-1414	395	23-608	51	31-630
91	22-3108	210	22-1610	298	22-1402	396	23-609	52	31-631
92	22-3109	211	22-1611	299	22-1119	397	23-610	53	31-625
93	22-3110	212	22-1612	300	22-1307	398	23-611	61	31-701
94	22-3111	213	22-1613	301	22-1120	401	23-612	62	31-702
95	22-3112	214	22-1614	302	22-1305	402	24-401	63	31-703
96	22-3113	215	22-1615	303	22-1306	403	24-402	64	31-704
97	22-3114	216	22-1616	304	22-1701	404	24-403	65	31-705
98	22-2203	217	22-1617	305	22-1702	405	24-404	66	31-706
99	22-1207	218	22-1618	306	22-1703	406	24-405	67	31-707
111	22-1102	219	22-1619	307	22-3407	407	24-406	68	31-708
112	22-1103	220	22-1620	308	22-3408	408	24-407	69	31-709
113	22-1104	221	22-1621	309	Obsolete	409	24-408	70	31-710
		222	22-1622				24-409	70a	31-711



CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 7:</b>		<b>Title 7:</b>		<b>Title 8:</b>		<b>Title 8:</b>		<b>Title 11:</b>	
71	31-712	244	31-1104	141	32-301	318	46-307	44	28-2314
72	31-713	245	31-1105	142	32-302	319	46-308	60	28-1101 note
73	31-714	246	31-1106	143	32-303	320	46-309	61	28-1101
74	31-715	246a	31-1107	144	32-304	321	46-310	62	28-1102
75	31-716	247	31-1108	145	32-305	322	46-311	63	28-1103
76	31-717	248	31-1109	146	32-306	323	46-312	64	28-1104
77	31-718	249	31-1110	147	32-307	324	46-313	65	28-1105
78	31-719	250	31-1111	148	32-308	325	46-314	66	28-1106
79	31-720	251	31-1112	148a	32-309	326	46-315	67	28-1107
91	31-201	252	31-1113	149	32-310	327	46-316	68	28-1108
92	31-202	253	31-401	150	32-311	328	46-317	69	28-1109
93	31-203	254	31-402	151	32-312	329	46-318	70	28-1110
94	31-204	255	31-403	152	32-312 note	330	46-319	71	28-1111
95	31-205	256	31-404	153	32-314	331	46-320	72	28-1112
96	31-206	257	31-405	154	32-315	332	46-321	73	28-1113
97	31-207	258	31-406	155	32-316	333	46-322	74	28-1114
98	31-208	259	31-1114	156	32-317	334	46-323	75	28-1115
99	31-209	260	31-1115	157	32-318	335	46-324	76	28-1116
100	31-210	<b>Title 8:</b>		158	32-319	<b>Title 9:</b>		77	28-1201
111	36-201	1	3-101	159	32-320	1	14-101	78	28-1202
112	36-202	2	3-102	171	32-801	2	14-102	79	28-1203
113	36-203	3	3-103	172	32-802	3	14-201	80	28-1204
114	36-204	4	3-104	173	32-803	4	14-202	81	28-1205
115	36-205	5	3-105	174	32-804	5	14-203	82	28-1206
116	36-206	6	3-106	175	32-805	6	14-103	83	28-1207
117	36-207	7	3-107	176	32-806	7	14-204	84	28-1208
118	36-208	8	3-108	177	32-807	8	14-301	85	28-1209
119	36-209	9	3-109	178	32-808	9	14-302	86	28-1210
120	36-210	10	3-110	179	32-809	10	14-303	87	28-1211
121	36-211	11	3-111	180	32-810	11	14-304	88	28-1212
122	36-212	12	3-112	181	32-811	12	14-305	89	28-1213
123	36-213	13	3-113	182	32-812	13	14-306	90	28-1214
124	36-214	14	3-114	183	32-813	14	14-307	91	28-1215
125	36-215	15	3-115	184	32-814	15	14-401	92	28-1216
126	36-216	16	3-116	185	32-815	16	14-402	93	28-1217
127	36-217	17	3-117	186	32-816	17	14-403	94	28-1218
128	36-218	18	3-118	187	32-817	18	14-404	95	28-1219
129	36-219	19	3-119	188	32-818	19	14-405	96	28-1220
130	36-220	20	3-120	189	32-819	20	14-308	97	28-1221
131	36-221	21	3-121	190	32-820	21	14-104	98	28-1222
132	36-222	22	3-122	191	32-821	22	14-406	99	28-1223
133	36-223	23	3-123	192	32-822	23	14-309	100	28-1224
134	36-224	24	3-124	211	32-901	31	14-501	101	28-1301
135	36-225	25	3-125	212	32-902	32	14-502	102	28-1302
136	36-226	41	32-501	213	32-903	<b>Title 10:</b>		103	28-1303
137	36-227	42	32-502	214	32-904	1	11-1501	104	28-1304
141	31-211	43	32-503	215	32-905	2	11-1502	105	28-1305
142	31-212	44	32-504	216	32-906	3	11-1503	106	28-1306
143	31-213	51	32-601	217	32-907	4	11-1504	107	28-1307
161	31-301	52	32-602	218	32-908	5	11-1505	108	28-1308
162	31-302	53	32-603	219	32-909	6	11-1506	109	28-1309
163	31-303	54	32-604	220	32-910	7	11-1507	110	28-1310
164	31-304	55	32-605	221	32-911	8	11-1508	111	28-1311
165	31-305	56	32-606	222	32-912	9	11-1509	112	28-1401
171	31-801	57	32-607	223	32-913	10	11-1510	113	28-1402
172	31-802	58	32-608	231	32-1001	11	11-1511	114	28-1403
173	31-803	59	32-609	232	32-1002	12	1-514	115	28-1404
174	31-804	60	32-610	233	32-1003	13	1-515	116	28-1405
175	31-805	61	32-611	234	32-1004	14	45-708	117	28-1406
176	31-806	62	32-612	235	32-1005	15	45-709	118	28-1407
177	31-807	63	32-613	236	32-1006	16	11-1512	119	28-1408
178	31-808	64	32-614	237	32-1007	17	11-1513	120	28-1409
179	31-809	65	32-615	238	32-1008	18	11-1514	121	28-1410
191	31-901	66	32-616	239	32-1009	19	Effective	122	28-1411
192	31-902	67	32-617	251	46-101		date	123	28-1501
193	31-903	68	32-618	252	46-102	20	11-1515	124	28-1502
194	31-904	69	32-619	253	46-103	21	5-316	125	28-1503
195	31-905	70	32-620	254	46-104	22	1-629	126	28-1504
201	31-501	71	32-621	255	46-105	23	5-429	127	28-1505
202	31-592	72	32-622	256	46-106	24	6-103	128	28-1506
203	31-503	73	32-623	257	46-107	25	11-1516	129	28-1507
204	31-504	74	32-624	258	46-108	26	11-1517	130	28-1508
205	31-505	75	32-625	259	46-109	27	11-1518	131	28-1601
206	31-506	76	32-626	260	46-110	28	11-1519	132	28-1602
207	31-507	77	32-627	261	46-111	<b>Title 11:</b>		133	28-1603
211	31-1001	78	32-628	262	46-112	1	12-301	134	28-1604
212	31-1002	79	32-629	263	46-113	2	12-302	135	28-1605
213	31-1003	91	32-701	264	46-114	3	12-303	136	28-1606
214	31-1004	92	32-702	265	46-115	4	12-304	136a	28-1607
215	31-1005	93	32-703	266	46-116	5	12-305	137	28-1608 note
216	31-1006	94	32-704	281	46-201	6	12-306	138	28-1608
217	31-1007	95	32-705	282	46-202	11	12-401	<b>Title 12:</b>	
218	31-1008	96	32-706	283	46-203	12	12-402	1	7-101
219	31-1009	97	32-707	284	46-204	13	12-403	2	7-102
220	31-1010	98	32-708	285	46-205	14	28-1701	2a	7-103
221	31-1011	99	32-709	286	46-206	15	28-1702	3	7-104
222	31-1012	100	32-710	287	46-207	16	28-1703	4	7-105
223	31-1013	111	32-101	288	46-208	17	28-1704	5	7-106
224	31-1014	112	32-102	289	46-209	18	28-1705	6	7-107
225	31-1015	113	32-103	290	46-210	31	28-2301	7	7-108
226	31-1016	114	32-104	291	46-211	32	28-2302	8	7-109
227	31-1017	121	32-201	292	46-212	33	28-2303	9	7-110
228	31-1018	122	32-202	293	46-213	34	28-2304	10	7-111
229	31-1019	123	32-203	294	46-214	35	28-2305	11	7-112
230	31-1020	124	32-204	295	46-215	36	28-2306	12	7-113
231	31-1021	125	32-205	311	46-301	37	28-2307	13	7-114
232	31-1022	126	32-206	312	46-302	38	28-2308	14	7-115
233	31-1023	127	32-207	313	46-303	39	28-2309	15	7-116
234	31-1024	128	32-208	314	46-304	40	28-2310	16	7-117
241	31-1101	129	32-209	315	Temporary	41	28-2311	17	7-118
242	31-1102	130	32-210	316	46-305	42	28-2312	18	7-119
243	31-1103	131	32-211	317	46-306	43	28-2313	19	7-120



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 12:</b>		<b>Title 12:</b>		<b>Title 14:</b>		<b>Title 16:</b>		<b>Title 18:</b>	
20	7-121	101	7-710	71	16-411	41	S. 21-310	123	11-503
21	7-123 note	111	7-1201	72	16-412	42	21-308	124	11-504
22	7-123 note	112	7-1202	73	16-413	42a	21-309	125	11-505
23	7-123 note	113	7-1203	74	16-414	43-57	S. 21-310 to	126	11-506
24	7-122 note	114	7-1204	75	16-415		325	127	11-507
25	7-122 note	115	7-1205	76	16-416	58	21-310	128	11-508
26	7-123 note	116	7-1206	77	16-417	59	21-311	129	11-509
27	7-122 note	117	7-1207	78	16-418	60	21-312	130	11-510
28	7-122 note	118	7-1208	79	16-419	61	21-313	131	11-511
29	7-122 note	118a	7-1209	80	16-420	62	21-314	132	11-512
30	7-122 note	119	7-1210	81	16-421	63	21-315	133	11-513
31	7-123 note	120	7-1211	82	16-422	64	21-316	134	11-514
32	7-122 note	121	7-1212	<b>Title 15:</b>		65	21-317	135	11-515
33	7-122 note	122	7-1213	1	16-207 note	66	21-318	136	11-516
34	7-123 note	123	7-1214	1a	16-201	67	21-320	137	11-517
35	7-122 note	124	7-1215	1b	16-202	68	21-321	138	11-518
36	7-122 note	125	7-1216	1c	16-203	69	21-322	139	11-519
37	7-122	126	7-1217	1d	16-204	70	21-323	140	11-520
38	7-122 note	127	7-1218	1e	16-205	71	21-324	151	11-601
39	7-123	128	7-1219	1f	16-206	72	21-325	152	11-602
40	7-124	129	7-1220	1g	16-207	<b>Title 17:</b>		152a	11-603
41	7-125	130	7-1221	11	36-101	1	28-2701	153	11-604
42	7-126	131	7-1221	12	36-102	2	28-2702	154	11-605
43	7-127	132	7-1223	13	36-103	3	28-2703	155	11-606
44	7-128	133	7-1224	14	36-104	4	28-2704	156	11-607
45	7-129	134	7-1225	15	36-105	5	28-2705	157	11-608
46	7-130	135	7-1226	16	36-106	6	28-2706	158	11-609
47	7-131	136	7-1227	17	36-107	7	28-2707	159	11-610
48	7-107 note	137	7-1228	18	36-108	8	28-2708	160	11-611
49	7-107 note	138	7-1229	19	36-109	9	28-2709	161	11-612
50	7-107 note	139	7-1230	20	36-110	21	26-601	162	11-613
50a	7-107 note	140	7-1231	21	36-111	22	26-602	163	11-614
51	7-501	141	7-1232	31	21-101	23	26-603	164	11-615
52	7-502	142	7-1233	32	21-102	24	26-604	165	11-616
53	7-503	143	7-1234	33	21-103	25	26-605	166	11-617
54	7-504	<b>Title 13:</b>		34	21-104	26	26-606	167	11-618
55	7-505	1	34-101	34a	21-105	27	26-607	168	11-619
55a	7-506	2	34-102	35	21-106	28	26-608	169	11-620
56	7-507	3	34-103	36	21-107	29	26-609	170	11-621
57	7-508	4	38-201	37	21-108	30	26-610	171	11-622
58	7-509	5	34-104; 38-202	38	21-109	31	26-611	172	11-623
59	7-510	6	34-105; 38-203	39	21-110	<b>Title 18:</b>		173	11-624
60	7-511	<b>Title 14:</b>		40	21-111	1	11-101	174	11-625
61	7-512	1	30-101	41	21-112	2	11-102	175	11-626
61a	7-513	2	30-102	42	21-113	21	11-201	176	11-627
61b	7-514	3	30-103	43	21-114	21a	11-202	191	11-701
62	7-515	4	30-104	44	21-115	21b	11-203	192	11-702
63	7-516	5	30-105	45	21-116	22	11-202	193	11-703
64	7-517	6	30-106	46	21-117	23	11-203	194	11-704
65	7-518	7	30-107	47	21-118	24	11-204	195	11-705
66	7-519	8	30-108	48	21-119	25	11-205	196	11-706
67	7-520	8a	30-109	49	21-120	26	17-101	197	11-707
68	7-521	9	30-110	50	21-121	27	17-102	198	11-708
69	<b>Temporary</b>	10	30-111	51	21-122	28	17-103	199	11-709
70	7-522	11	30-112	52	21-123	29	17-104	200	11-710
70a	7-523	12	30-113	53	21-124	30	S. 11-934	201	11-711
70b	7-524	13	30-114	54	21-125	31	11-206	202	11-712
71	7-601	14	30-115	55	21-126	32	11-207	203	11-713
72	7-602	15	30-116	56	21-127	33	11-208	204	11-714
73	7-603	16	30-117	57	21-128	34	11-209	205	11-715
74	7-604	21	30-201	58	21-129	35	11-210	206	11-716
75	7-605	22	30-202	59	21-130	36	11-211	207	11-717
76	7-606	23	30-203	61	21-201	41	11-301	208	11-718
77	7-607	24	30-204	62	21-202	42	11-302	209	11-719
78	7-608	25	30-205	63	21-203	43	11-305	210	11-720
78a	7-609	26	30-206	64	21-204	44	11-306	211	11-721
79	7-610	27	30-207	65	21-205	45	11-307	212	11-722
80	7-611	28	18-201	66	21-206	46	11-308	213	11-723
81	7-612	29	18-202	67	21-207	47	11-309	214	11-724
82	7-613	30	18-203	68	21-208	48	11-303	215	11-725
83	7-614	31	18-204	69	21-209	49	11-304	216	11-726
84	7-615	32	18-205	70	21-210	50	11-310	217	11-727
85	7-616	33	18-206	71	21-211	51	11-312	218	11-728
86	7-617	34	18-207	72	21-212	52	11-1301	219	11-729
87	7-618	35	18-208	73	21-213	53	11-1302	220	11-730
88	7-619	36	18-209	<b>Title 16:</b>		54	11-1303	221	11-731
89	7-620	37	18-210	1	21-310 note	55	11-1304	222	11-732
90	7-621	38	18-211	2	21-301	56	11-311	223	11-733
90a	7-622	39	18-212	3	21-302	57	11-315	224	11-734
90b	7-623	40	18-213	4	21-303	58	11-313	225	11-735
90c	7-624	41	18-214	5	21-304	59	11-314	226	11-736
90d	7-625	42	18-215	6	21-305	60	11-329	227	11-737
90e	7-626	43	30-208	11	32-401	61	16-201 to 207	228	11-738
90f	7-627	44	30-209	12	32-402	62	11-330	229	11-739
90g	7-628	45	30-210	12a	32-403	71	11-316	230	11-740
90h	7-629	46	30-211	13	32-404	72	11-317	231	11-741
90i	7-630	47	30-212	13a	32-405	73	11-318	232	11-742
90j	7-631	48	30-213	14	32-406	74	11-319	233	11-743
90k	7-632	49	30-214	15	21-319	75	11-320	234	11-744
90l	7-633	50	30-215	16, 17	S. 21-317	76	11-321	235	11-745
90m	7-633 note	51	30-216	18	21-306	81	11-322	236	11-746
90n	7-634	61	16-401	19	21-307	82	11-323	237	11-747
91	7-701	62	16-402	20	21-320	91	11-324	238	11-748
92	7-702	63	16-403	21	32-407	101	11-325	239	11-749
93	7-703	64	16-403 note	31	21-326	102	11-326	241	11-801
94	7-704	65	16-404	32	21-327	103	11-327	241a	11-802
95	7-705	66	16-405	33	21-328	104	11-328	241b	11-808
96	7-706	67	16-406	34	21-329	111	11-401	241c	11-804
97, 98	S. 7-707	68	16-407	35	21-330	112	11-402	241d	11-805
98a	7-707	69	16-408	36	21-331	113	11-403	241e	11-806
99	7-708	69a	16-409	37	21-332	121	11-501	241f	11-807
100	7-709	70	16-410	38	21-333	122	11-502	241g	11-808



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 18:</b>		<b>Title 19:</b>		<b>Title 19:</b>		<b>Title 20:</b>		<b>Title 20:</b>	
241h	11-809	24	36-304	169	48-299	55	1-812	176	2-806
241i	11-810	25	36-305	170	48-210	56	1-813	177	2-807
241j	11-811	26	36-306	171	48-211	56a	1-814	178	2-808
241k	11-812	27	36-307	181	48-301	56b	1-815	179	2-809
241l	11-813	28	36-308	182	48-302	57	1-816	180	2-810
241m	11-814	29	36-309	183	48-303	58	1-817	181	2-811
241n	11-815	30	36-310	184	48-304	59	1-237	182	2-812
241o	11-816	31	36-311	185	48-305	60	1-724	191	2-601
241p	11-817	41	6-601	186	48-306	61	1-725	192	2-602 note
241q	11-818	42	6-602	187	48-307	62	1-726	193	2-602
241r	11-819	43	6-603	191	48-401	63	1-727	194	2-603
241s	Repealing	44	6-604	192	48-402	64	S. 1-703, 707,	195	2-604
241t	11-820	45	6-605	193	48-403		710	196	2-605
241u	Effective date	46	6-606	201	R. '38, 52	65	S. 1-707	197	2-606
251	11-901	47	6-607		Stat. 624,	66	S. 1-714	198	2-607
251a	11-902	48	6-608		ch. 322, § 18	67	1-704	199	2-608
252	11-903	61-65	R. '35, 49	211	36-401	68	S. 1-709	200	2-609
253	11-904		Stat. 653,	212	36-402	69	1-719	201	2-610
254	11-905		ch. 549, § 5	213	36-403	70	1-720	202	2-611
255	11-906	65	6-802 note	214	36-404	71	1-721	203	2-612
256	11-907	66	6-801	215	36-405	72	1-722	204	2-613
257	11-908	67	6-802	216	36-406	73	1-723	205	2-614
258	11-909	68	6-803	217	Temporary	74	1-316	206	2-615
259	11-910	69	6-804	218	36-407	75	1-317	207	2-616
260	11-911	70	Repealing	219	36-408	76	1-310	208	2-617
261	11-912	71	7-801	220	36-409	77	1-308	211-238	S. 2-301 to 331
262	11-913	72	7-802	221	36-410	78	1-309	241	2-401
263	11-914	73	7-803	222	36-411	79	1-304	242	2-402
264	11-915	74	7-804	223	36-412	80	1-305	243	2-403
265	11-916	75	7-805	224	36-413	81	1-306	244	2-404
266	11-917	76	7-806	225	36-414	82	1-301	245	Obsolete
267	11-918	81	44-401	226	36-415	83	1-302	246	2-405
268	11-919	82	44-402	227	36-416	84	1-303	247	2-406
269	11-920	83	44-403	228	36-417	85	1-312	248	2-407
270	11-921	84	44-404	229	36-418	86	1-728	249	2-408
271	11-922	85	44-405	230	36-419	87	1-729	250	2-409
272	11-923	86	44-101	231	36-420	88	1-313	251	2-410
273	11-924	87	44-102	232	36-421	89	1-314	252	2-411
274	11-925	88	44-103	233	36-422	90	1-315	261	2-501
275	11-926	91	7-1001	<b>Title 20:</b>		91	1-307	262	2-502
276	11-927	101	16-701	1	1-101	92-95	Temporary	263	2-503
277	11-928	102	16-702	2	1-102	95a	1-311	264	2-504
278	11-929	103	16-703	3	1-103	96	40-503 note	265	2-505
279	11-930	104	16-704	4	1-104	97	40-502, 503	266	2-506
280	11-931	105	16-705	5	1-105	98	40-501	267	2-507
281	11-932	106	16-706	6	1-106	99	1-818	268	2-508
282	11-933	107	16-707	7	1-107	100	1-819	269	2-509
283	11-934	111	28-2801	8	1-108	101	1-239	270	2-510
284	11-935	112	28-2802	9	1-218	102	1-240	271	2-511
285	11-936	113	28-2803	9a	1-214	103	1-902	272	2-512
286	11-937	121	43-1301	10	1-238	104	1-903	273	2-513
287	11-938	122	43-1302	11	1-220	105	1-904	274	2-514
288	11-939	123	43-1303	12	1-201	106	1-905	275	2-515
289	11-940	124	43-1304 note	13	1-202	107	43-1304 note	276	2-516
290	11-941	125	43-1304 note	14	1-203	107a	43-1304 note	277	2-517
291	11-942	126	43-1304 note	15	1-204	107b	43-1304 note	278	2-518
292	11-901 note	127	43-1304 note	16	1-205	107c	43-1304 note	279	2-519
293	Repealing	128	43-1304 note	17	1-206	121	2-101	280	2-520
301	11-1001	129	43-1304 note	18	1-207	122	2-102	281	2-521
302	11-1002	130	43-1304 note	19	1-208	123	2-103	282	2-522
311	11-1101	130a	43-1304 note	20	R. '35, 49	124	2-104	291	2-901
312	11-1102	130b	43-1304 note		Stat. 430,	125	2-105	292	2-902
313	11-1103	130c	43-1304 note		ch. 332, § 1	126	2-106	293	2-903
314	11-1104	130d	43-1304 note	20a	1-213	127	2-107	294	2-904
321	11-1201	130e	43-1304 note	21	1-209	128	2-108	295	2-905
322	11-1202	130f	43-1304 note	22	1-210	129	2-109	296	2-906
323	11-1203	130g	43-1304 note	23	1-211	130	2-110	297	2-907
324	11-1204	130h	43-1304 note	24	1-212	131	2-111	298	2-908
325	11-1205	130i	43-1304 note	25	1-901	132	2-112	299	2-909
326	11-1206	130j	43-1304 note	26	1-219	133	2-113	301	2-1001
327	11-1207	130k	43-1304 note	27	1-215	134	2-114	302	2-1002
328	11-1208	130l	43-1304 note	28	1-216	135	2-115	303	2-1003
341	11-1401	130m	43-1304 note	28a	1-217	136	2-116	304	2-1004
342	11-1402	130n	43-1304 note	29	1-221	137	2-117	305	2-1005
343	11-1403	130o	43-1304 note;	30	1-222	138	2-118	306	2-1006
344	11-1404		44-104	31	1-223	139	2-119	307	2-1007
345	11-1405	130p	43-1304 note;	32	1-224	140	2-120	308	2-1008
346	11-1406		44-105	33	1-225	141	2-121	309	2-1009
347	11-1407	130q	43-1304 note;	34	1-226	142	2-122	310	2-1010
348	11-1408		44-106	35	1-227	143	2-123	311	2-1011
349	11-1409	130r	43-1304 note	36	1-228	144	2-124	312	2-1012
350	11-1410		44-107	37	1-229	145	2-125	313	2-1013
351	11-1411	130s	43-1304 note	38	1-230	146	2-126	314	2-1014
352	11-1412	130t	43-1304 note	38a	1-231	147	2-127	315	2-1015
353	11-1413	130u	43-1304 note	38b	1-232	148	2-128	316	2-1016
354	11-1414	130v	43-1304 note	38c	1-233	149	2-129	317	2-1017
355	11-1415	131	7-1101	39	1-234	150	2-130	318	2-1018
356	11-1416	132	7-1102	40	1-235	151	2-131	319	2-1019
357	11-1417	133	7-1103	41	1-236	152	2-132	320	2-1020
358	11-1418	134	7-1104	42	49-110	153	2-133	321	2-1021
359	11-1419	135	7-1105	43	49-111	154	2-134	322	2-1022
360	11-1420	141	21-401	44	1-801	155	2-135	323	2-1023
<b>Title 19:</b>		151	48-101	45	1-802	156	2-136	324	2-1024
1	26-201	152	48-102	46	1-803	157	2-137	325	2-1025
2	26-202	161	48-201	47	1-804	158	2-138	326	2-1026
3	26-203	162	48-202	48	1-805	159	2-139	327	2-1027
4	26-204	163	48-203	49	1-806	160	2-140	328	2-1028
11	36-501	164	48-204	50	1-807	171	2-801	329	2-1029
12	36-502	165	48-205	51	1-808	172	2-802	330	2-1030
21	36-301	166	48-206	52	1-809	173	2-803	331	2-1031
22	36-302	167	48-207	53	1-810	174	2-804	341	2-1401
23	36-303	168	48-208	54	1-811	175	2-805	342	2-1402



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>	
343	2-1403	447j	2-1110	540a	4-208	657	47-209	760	47-1701
344	2-1404	447j	2-1111	540b-540k	Temporary	658	47-210	761	47-1702
345	2-1405	447k	2-1112	540l	4-301	659	47-211	762	47-1703
346	2-1406	447l	2-1113	540m	4-302	670	47-212	763	R. '39, 53
347	2-1407	447m	2-1114	540n	4-303	670a	R. '38, 52		Stat. 1108,
348	2-1408	447n	2-1114 note	540o	4-304		Stat. 375,		ch. 367, tit.
361	2-1501	447o	2-1115	540p	4-305		ch. 223, § 8		IV, § 2
362	2-1502	447p	2-1116	540q	4-306	670b		764	47-1704
363	2-1503	447q	2-1117	541	4-123	671	47-401	764a	47-1705
364	2-1504	447r	2-1118	551	4-401	672	47-402	765	47-1706
365	2-1505	451	4-101	552	4-402	673	47-403	766	47-1707
366	2-1506	452	4-102	553	4-403	674	47-404	767	47-1708
367	2-1507	453	4-103	554	4-404	675	47-405	768	47-1709
368	1-701	453a	4-104	555	S. 4-405	676	47-406	769	47-1213
368a	1-702	454	4-105	555a	4-405	677	47-407	770	47-1214
368b	1-703	455	4-106	556	4-406	678	47-408	771	47-1301
368c	1-705	456	4-107	557	4-407	681	47-501	772	47-1302
368d	1-706	457	S. 4-108	558	4-408	682	47-502	773	47-1303
368e	1-707	457a	4-108	559	4-409	683	47-503	774	47-1304
368f	1-708	458	4-109	560	4-410	691	47-601	775	47-1305
368g	1-709	459	4-110	561	S. 39-102	692	47-602	791	47-1001
368h	1-710	460	4-111	562	4-411	693	47-604	792	47-1002
368i	1-711	461	4-112	563	4-412	694	47-605	793	47-1003
368j	1-712	462	S. 4-113	581	4-501	695	47-606	793a	47-1004
368k	1-713	463	4-113	581a	4-502	696	47-701	794	47-1005
368l	1-714	464	Temporary	582	4-503	697	47-702	795	47-1006
368m	1-715	465	4-114	582a	4-504	697a	47-703	796	47-1007
368n	1-716	466	4-115	582b	4-505	698	47-704	797	47-1008
368o	1-717	467	4-116	583	4-506	699	47-705	798	47-1009
368p	1-718	468	4-117	584	4-507	700	47-706	799	47-1010
381	2-201	469	4-118	585	4-509	701	47-707	800	R. '36, 49 Stat.
382	2-202	470	4-119	586	4-510	702	47-708		1153, ch. 111, § 5
383	2-203	471	4-120	587	4-511	703	47-709	800a	47-1011
384	2-204	472	4-121	588	4-512	704	47-710	800b	47-1012
385	2-205	473	4-122	589	4-513	705	47-711	800c	47-1013
386	2-206	474	Temporary	590	4-514	706	47-712	800d	47-1014
387	2-207	475	4-124	591	4-515	707	47-713	800e	Repealing
388	2-208	476	4-125	592	4-516	708	47-714	801	47-1015
389	2-209	477	4-126	593	4-517	709	47-715	821	47-1016
401	5-601	478	4-127	601	4-601	710	47-716	822	47-1017
402	5-602	479	4-128	602	4-602	711	47-717	823	47-1018
403	5-603	480	4-129	603	4-603	712	47-801	831	47-1901
404	5-604	481	4-130	604	4-604	713	47-802	832	47-1902
405	5-605	482	4-131	611	4-701	714	47-803	833	47-1903
406	5-606	483	4-132	612	4-702	715	47-804	834	47-1904
407	5-607	484	4-133	613	4-703	716	47-805	835	47-1905
408	5-608	485	4-134	614	4-704	717	47-806	836	47-1906
409	5-609	486	4-135	615	4-108	718	47-807	837	47-1907
410	5-610	487	4-136	616	4-405	719	47-808	838	47-1908
411	5-611	488	4-137	617	4-801	720	47-809	839	47-1909
412	5-612	489	4-138	618	4-802	721	47-810	840	47-1910
413	5-613	490	4-139	621	47-101	722	47-811	841	47-1911
414	5-614	491	4-140	622	47-102	723	47-812	842, 843	R. '37, 50 Stat.
415	5-615	492	4-141	623	47-103	724	47-813		683, ch. 690,
421-433	Obsolete	493	4-142	624	47-104	725	47-814		tit. IV, § 6
434	2-1201	494	4-143	625	47-105	725a	47-815	844	47-1912
435	2-1202	495	4-144	626	47-106	725b	47-816	845	47-1913
436	2-1203	496	4-145	627	47-107	726	47-817	846	47-1914
437	2-1204	497	4-146	628	47-301	727	47-818	847	47-1915
438	2-1205	498	4-147	629	47-302	728	47-819	848	47-1916
439	2-1206	499	4-148	630	47-303	729	47-820	849	47-1918
440	2-1207	500	4-149	631	47-304	730	47-821	850	47-1919
441	2-1208	501	4-150	632	47-305	731	47-822	861	47-2301
442	2-1209	502	4-151	633	47-306	732	47-823	862	S. 47-2304
445	2-1301	503	4-152	634	47-309	733	47-824	863	S. 47-2305
445a	2-1302	504	4-153	635	47-310	734	47-825	864	S. 47-2304
445b	2-1303	505	4-154	636	47-311	734a	47-826	865	S. 47-2306
445c	2-1304	506	4-155	636a	47-108	734b	47-827	866	S. 47-2343
445d	2-1305	507	4-156	636b	47-109	734c	47-828	867	S. 47-2308
445e	2-1306	508	4-157	636c	47-110	735	47-829	868	S. 47-2309
445f	2-1307	509	4-158	637	47-111	735a	47-830	869	47-2201
445g	2-1308	510	4-159	638	47-112	736	47-718	870	47-2202
445h	2-1309	511	4-160	639	47-113	737	47-719	871	47-2203
445i	2-1310	512	4-161	640	47-114	738	47-720	872	47-2204
445j	2-1311	513	4-162	641	47-115	739	47-721	873	47-2205
445k	2-1312	514	4-163	642	47-116	740	47-901	874	47-2206
445l	2-1313	515	4-164	643	47-117	741	47-902	875	47-2207
445m	2-1314	516	4-165	643a	37-110; 47	742	47-903	876	47-2208
445n	2-1315	517	4-166		118	743	47-904	877	S. 47-2327
445o	2-1316	518	4-167	644	47-119	744	Temporary	878	S. 47-2301
445p	2-1317	519	4-168	645	47-120	745	47-905		et seq.
445q	2-1318	520	4-169	646	47-121	746	47-1101	879	S. 47-2331
445r	2-1319	521	4-170	647	47-122	746a	47-1102	880	S. 47-2335
445s	2-1320	522	4-171	648	47-123	746b	47-1103	881	S. 47-2334
445t	2-1321	523	4-172	649	47-124	746c	47-1104	882	S. 47-2331
445u	2-1322	524	4-173	650	47-125	746d	47-1105	883	S. 45-1407
445v	2-1323	525	4-174	651	47-126	746e	47-1106	884	S. 47-2301 et
445w	2-1324	526	4-175	652	47-127	746f	47-307		seq.
445x	2-1325	527	4-176	653	47-128	747	47-308	885	S. 47-2301 et
445y	2-1326	528	4-177	654	47-129	748	47-603		seq.
445z	2-1327	529	4-178	655	47-130	751	47-1201	886	S. 47-2328
445aa	2-1328	530	4-179	656	47-131	752	47-1202	887	S. 47-2327
445bb	Repealing	531	4-180	657	47-132	753	47-1203	888	S. 47-2320
447	2-1101	532	4-181	658	47-133	754	47-1204	889	S. 47-2301 et
447a	2-1102	533	4-201	659	47-201	755	47-1208		seq.
447b	2-1103	534	4-202	660	47-202	755a	47-1204	890	S. 47-2301 et
447c	2-1104	535	4-203	661	47-203	756	47-1205		seq.
447d	2-1105	536	4-204	662	47-204	757	47-1206	891	S. 47-2325
447e	2-1106	537	4-205	663	47-205	758	47-1209	892	S. 47-2323
447f	2-1107	538	4-208	664	47-206	758a	47-1210	893	S. 47-2301 et
447g	2-1108	539	4-206	665	47-207	758b	47-1211		seq.
447h	2-1109	540	4-207	666	47-208	759	47-1212	894	S. 47-2320



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 20:</b>	
895	S. 47-2322	971	Temporary	1212	27-130	1408	43-1538	1540e	8-115
896	S. 47-2301 et seq.	971a	47-2501	1213	27-131	1421	37-101	1540f	8-116
897	S. 47-2319	971b	47-2502	1221	33-101	1422	37-102	1540g	8-117
898	S. 47-2311	971c	47-2503	1222	33-102	1423	37-103	1540h	8-118
899	S. 47-2342	971d	47-2504	1223	33-103	1424	37-104	1540i	8-119
900	S. 47-2336	971e	Temporary	1224	33-104	1425	37-105	1540j	8-120
901	S. 47-2336	972	47-2401	1225	33-105	1426	37-106	1540k	8-121
902	S. 47-2314	973	47-2402	1226	33-106	1427	37-107	1540l	8-122
903	S. 47-2336	974	47-2403	1227	33-107	1428	37-108	1540m	8-123
904	S. 1-231 to 233	975	47-2404	1228	33-108	1429	37-109	1541	8-124
905	S. 47-2317	976	47-2405	1229	33-109	1441	39-101	1542	8-125
906	S. 47-2339	977	47-2406	1230	33-110	1442	39-102	1543	8-126
907 to 910	47-2321 note	978	47-2407	1241	33-201	1443	39-103	1544	8-127
911 to 913	S. 47-2301 et seq.	979	47-2408	1242	33-202	1444	39-104	1545	8-128
914	40-102 note	979a	47-2409	1243	33-203	1445	39-105	1546	8-129
915	47-2001	979b	47-2410	1251	33-301	1446	39-112	1547	8-130
916	47-2002	979c	47-2411	1252	33-302	1447	39-201	1548	8-131
917	47-2003	979d	Repealing	1253	33-303	1448	39-202	1549	8-132
918	47-2004	979e	47-2412	1254	33-304	1449	39-203	1550	8-133
919	47-2005	980	47-1501	1255	33-305	1450	39-204	1551	8-134
920	47-2006	980a	47-1502	1256	33-306	1451	39-205	1552	8-135
921	47-2007	980b	47-1503	1257	33-307	1452	39-106	1553	8-136
921a	47-2008	980c	47-1504	1258	33-308	1453	39-107	1554	8-137
922	S. 47-2345	980d	47-1505	1259	33-309	1454	39-111	1555	8-138
923	5-430	980e	47-1506	1260	33-310	1455	39-206	1556	8-139
941 to 949	S. 47-2101 to 2110, 2301 to 2350	980f	47-1507	1261	33-311	1456	39-207	1557	8-140
950	47-2111	980g	47-1508	1262	33-312	1457	39-208	1558	8-141
951	S. 47-2101 to 2109, 2301 to 2350	980h	47-1509	1263	33-313	1458	39-209	1558a	8-142
961	47-1107	980i	47-1510	1264	33-314	1459	39-210	1559	8-143
962	47-409	980j	47-1511	1265	33-315	1460	39-211	1560	8-144
963	47-722	980k	47-1512	1266	33-316	1461	39-212	1561	8-145
964	47-723	980l	47-1513	1267	33-317	1462	39-213	1562	8-146
965	47-1401	980m	47-1514	1268	33-318	1463	39-214	1563	8-148
965a	47-1402	980n	47-1515	1269	33-319	1464	39-301	1564	8-149
965b	47-1403	980o	47-1516	1270	S. 33-302, 303	1465	39-401	1565	8-150
965c	47-1404	980p	47-1517	1271	S. 33-307	1466	39-402	1566	8-151
965d	47-1405	980q	47-1518	1272	S. 33-312	1467	39-403	1567	8-152
965e	47-1406	980r	47-1519	1273	S. 33-313	1468	39-404	1568	8-153
965f	47-1407	980s	47-1520	1274	S. 33-313, 314	1469	39-405	1569	8-154
965g	47-1408	980t	47-1521	1275	S. 33-305	1470	39-501	1570	8-155
965h	47-1409	980u	47-1522	1276	S. 33-319	1471	39-502	1571	8-156
965i	47-1410	980v	47-1523	1277	33-320	1472	39-503	1572	8-157
965j	47-1411	980w	47-1524	1278	33-321	1473	39-504	1573	8-158
965k	47-1412	980x	47-1525	1291	6-501	1474	39-505	1574	8-159
966	47-1801	980y	47-1526	1292	6-502	1475	39-506	1575	8-160
966a	47-1802	980z	47-1527	1293	6-503	1476	39-507	1576	8-161
966b	47-1803	980aa	47-1528	1294	6-504	1477	39-508	1577	8-162
966c	47-1804	980bb	47-1529	1295-	Temporary	1478	39-509	1578	8-163
966d	47-1805	980cc	47-1530	1297	6-505	1479	39-510	1578a	8-164
966e	47-1806	980dd	47-1531	1298	6-506	1480	39-511	1578b	8-165
966f	47-1807	980ee	47-1532	1299	6-507	1481	39-512	1578c	8-166
966g	47-1808	980ff	47-1533	1300	6-508	1482	39-513	1578d	8-167
966h	47-1809	980gg	47-1534	1301	6-509	1483	39-514	1579	9-101
967	47-1901 to 1903, 1905, 1907, 1908	980hh	47-1535	1302	6-510	1484	39-601	1580	9-102
968	40-101	980ii	47-1536	1303	6-511	1485	39-602	1581	9-103
968a	40-102	980jj	47-1537	1304	6-401	1486	39-515	1582	8-169
968b	40-103	980kk	47-1538	1311	6-402	1487	39-607	1583	8-170
968c	40-104	980ll	47-1539	1312	6-403	1488	39-516	1583a	8-171
968d	40-105	980mm	47-1540	1313	6-404	1489	39-603	1584	9-201
968e	40-105 note	980nn	47-1541	1314	6-404	1490	39-604	1584a	9-202
969	47-1601	980oo	47-1542	1321-	R. '40, 54 Stat. 154, ch. 131, § 1	1491	39-605	1585	Temporary
969a	47-1602	980pp	47-1543	1338	6-901	1492	39-606	1586	Temporary
969b	47-1603	981	6-101	1351	6-902	1493	39-608	1587	9-204
969c	47-1604	982	6-102	1352	6-903	1494	39-801	1588	9-205
969d	47-1605	983	6-104	1353	43-1501	1495	39-701	1589	9-206
969e	47-1606	984	6-105	1371	43-1502	1496	39-702	1590	9-207
969f	47-1607	985	6-106	1372	43-1503	1497	39-703	1591	9-103
969g	47-1608	986	6-107	1373	43-1504	1498	39-704	1592	9-104
969h	47-1609	987	6-108	1374	43-1505	1499	39-705	1592a	9-105
969i	47-1610	988	6-109	1375	43-1506	1500	39-706	1601	9-106
969j	47-1611	989	6-110	1376	43-1507	1501	39-707	1602	9-107
969k	47-1612	990	6-111	1377	43-1508	1502	39-708	1603	9-108
969l	47-1613	991	6-112	1378	43-1509	1503	39-709	1604	9-109
969m	47-1614	992	6-113	1379	43-1510	1504	39-802	1605	9-110
969n	47-1615	993	6-114	1380	43-1511	1505	39-803	1606	9-111
969o	47-1616	994	6-115	1381	43-1512	1506	39-804	1607	9-112
969p	47-1617	995	S. 2-701	1382	43-1513	1507	39-805	1608	9-113
969q	47-1618	996	6-116	1383	43-1514	1508	39-903	1609	9-114
969r	47-1619	997	6-117	1384	43-1515	1509	39-901	1610	9-115
969s	47-1620	998	6-118	1385	43-1516	1510	39-904	1611	9-116
969t	47-1621	999	6-119	1386	43-1517	1511	39-905	1612	9-117
969u	47-1622	1001	6-301	1387	43-1518	1512	39-108	1613	9-301
969v	47-1623	1002	6-302	1388	43-1519	1513	S. 11-1420	1621	9-302
969w	47-1624	1003	6-303	1389	43-1520	1514	39-906	1622	9-303
969x	47-1625	1004	6-304	1390	43-1521	1515	39-902	1623	9-304
969y	47-1626	1111 to 1141	R. '39, 53 Stat. 1408, ch. 691, § 3	1391	43-1522	1516	39-806	1624	9-305
969z	47-1627	1151 to 1154	R. '39, 53 Stat. 1408, ch. 691, § 3	1392	43-1523	1517	39-517	1625	9-306
969aa	47-1628	1161 to 1169	R. '39, 53 Stat. 1408, ch. 691, § 3	1393	43-1524	1531	8-101	1626	47-2301
970 to 970n	Obsolete	1181 to 1201	R. '39, 53 Stat. 1408, ch. 691, § 3	1394	43-1525	1533	8-102	1701	47-2302
970o	Effective date			1395	43-1526	1533a	8-103	1702	47-2303
970p	Obsolete			1396	43-1527	1534	8-104	1703	47-2304
970q	Obsolete			1397	43-1528	1535	8-105	1704	47-2305
				1398	43-1529	1536	8-106	1705	47-2306
				1399	43-1530	1537	8-107	1706	47-2307
				1400	43-1531	1538	8-108	1707	47-2308
				1401	43-1532	1539	8-109	1708	47-2309
				1402	43-1533	1540	8-110	1709	47-2310
				1403	43-1534	1540a	8-111	1710	47-2311
				1404	43-1535	1540b	8-112	1711	47-2312
				1405	43-1536	1540c	8-113	1712	47-2313
				1406	43-1537	1540d	Executed	1713	47-2314
				1407			8-114	1714	



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 20:</b>		<b>Title 20:</b>		<b>Title 22:</b>		<b>Title 22:</b>		<b>Title 24:</b>	
1715	47-2315	1982	45-1413	129	28-619	305	28-1006	73	13-313
1716	47-2316	1983	45-1414	141	28-701	306	28-1007	74	13-314
1717	47-2317	1984	45-1415	142	28-702	307	28-1008	75	13-315
1718	47-2318	1985	45-1416	143	28-703	308	28-1009	76	13-316
1719	47-2319	1985a	45-1417	144	28-704	309	28-1010	77	13-317
1720	47-2320	1986	45-1418	145	28-705	<b>Title 23:</b>		78	13-318
1721	47-2321	1987	Repealing	146	28-706		1	41-201	79
1722	47-2322	1988	Effective date	147	28-707		2	41-202	80
1723	47-2323	<b>Title 21:</b>		148	28-708		3	41-203	81
1724	47-2324		16-1201	149	28-709	<b>Title 24:</b>	4	41-204	92
1725	47-2325		16-1202	150	28-710		5	41-101	93
1726	47-2326		16-1203	151	28-711		6	41-102	94
1727	47-2327	<b>Title 22:</b>		152	28-712		7	41-103	95
1728	47-2328	1	28-101	153	28-713	8	41-104	96	16-1706
1729	47-2329	2	28-102	154	28-714	9	41-105	97	16-1707
1730	47-2330	3	28-103	155	28-715	10	41-106	98	16-1708
1731	47-2331	4	28-104	156	28-716	11	41-107	99	16-1709
1731a	44-301	5	28-105	157	28-717	12	41-108	100	16-1710
1732	47-2332	6	28-106	158	28-718	13	41-109	101	16-1711
1733	47-2333	7	28-107	159	28-719	14	41-110	102	16-1712
1734	47-2334	8	28-108	160	28-720	15	41-111	103	16-1713
1735	47-2335	9	28-109	161	28-721	16	41-112	104	16-1714
1736	47-2336	10	28-110	162	28-722	17	41-113	105	16-1715
1737	47-2337	11	28-111	163	28-723	18	41-114	106	16-1716
1738	47-2338	12	28-112	164	28-724	19	41-115	107	16-1717
1739	47-2339	13	28-113	165	28-725	20	41-116	108	16-1718
1740	47-2340	14	28-114	166	28-726	21	41-117	109	16-1719
1741	47-2341	15	28-115	167	28-727	22	41-118	121	16-301
1742	47-2101	16	28-116	168	28-728	23	41-119	122	16-302
1743	47-2102	17	28-117	169	28-729	24	41-120	123	16-303
1744	47-2103	18	28-118	170	28-730	25	41-121	124	16-304
1745	47-2104	19	28-119	181	28-801	26	41-122	125	16-305
1746	47-2105	20	28-120	182	28-802	27	41-123	126	16-306
1747	47-2106	21	28-121	183	28-803	28	41-124	127	16-307
1748	47-2107	22	28-122	184	28-804	29	41-125	128	16-308
1749	47-2108	23	28-123	185	28-805	30	41-126	129	16-309
1750	47-2109	24	28-124	186	28-806	31	41-127	130	16-310
1751	47-2342	31	28-201	187	28-807	32	41-128	131	16-311
1752	47-2343	32	28-202	191	28-901	33	41-129	132	16-312
1753	47-2344	33	28-203	192	28-902	34	41-130	133	16-313
1754	47-2345	34	28-204	193	28-903	35	41-131	134	16-314
1755	47-2346	35	28-205	194	28-904	<b>Title 24:</b>		135	16-315
1756	47-2347	36	28-206	195	28-905		1	13-201	136
1757	47-2348	41	28-301	196	28-906		2	13-202	137
1758	47-2349	42	28-302	201	28-907		3	13-203	138
1759	47-2350	43	28-303	202	28-908	4	13-204	139	16-319
1801-1816	R. '34, 48	44	28-304	203	28-909	5	13-205	140	16-320
	Stat. 319,	45	28-305	204	28-910	6	13-206	141	16-321
	ch. 4, § 31	46	28-306	205	28-911	7	13-207	142	16-322
1901	25-101	47	28-307	206	28-912	8	13-208	143	16-323
1902	25-102	48	28-308	207	28-913	9	13-209	144	16-324
1903	25-103	49	28-309	208	28-914	10	13-210	145	16-325
1904	25-104	50	28-310	209	28-915	11	13-211	146	16-326
1905	25-105	51	28-311	210	28-916	12	13-212	147	16-327
1906	25-106	52	28-312	211	28-917	13	13-213	148	16-328
1907	25-107	53	28-313	221	28-918	14	13-215	149	16-329
1908	25-108	54	28-314	222	28-919	15	13-216	150	16-330
1909	25-109	55	28-315	223	28-920	16	13-217	151	16-331
1910	25-110	56	28-316	224	28-921	17	13-218	152	16-332
1911	25-111	57	28-317	225	28-922	18	13-219	153	16-333
1911a	25-112	58	28-318	226	28-923	19	13-220	154	16-334
1912	25-113	59	28-319	227	28-924	20	13-221	155	16-335
1913	25-114	60	28-320	228	28-925	21	13-222	161	16-501
1914	25-115	61	28-321	229	28-926	22	38-301	162	16-502
1915	25-116	71	28-401	230	28-927	23	38-302	163	16-503
1916	25-117	72	28-402	241	28-928	24	38-303	164	16-504
1917	25-118	73	28-403	242	28-929	25	38-304	165	16-505
1918	25-119	74	28-404	243	28-930	26	38-305	166	16-506
1919	25-120	75	28-405	244	28-931	31	12-101	167	16-507
1920	25-121	76	28-406	245	28-932	32	12-102	168	16-508
1921	25-122	77	28-407	246	28-933	33	12-103	169	16-509
1922	25-123	78	28-408	247	28-934	34	12-104	170	16-510
1923	25-124	79	28-409	248	28-935	35	12-105	171	16-511
1924	<b>Obsolete</b>	80	28-501	249	28-936	36	12-106	172	16-512
1925	25-125	81	28-410	261	28-937	37	12-107	173	16-513
1926	25-126	91	28-502	262	28-938	38	12-108	174	16-514
1927	25-127	92	28-503	263	28-939	39	12-109	175	16-515
1928	25-128	93	28-504	264	28-940	40	12-110		note
1929	25-129	94	28-505	265	28-941	41	12-111	176	16-516
1930	25-130	95	28-506	266	28-942	42	12-112	177	16-517
1931	25-131	96	28-507	267	28-943	43	12-113	178	16-518
1932	<b>Obsolete</b>	97	28-508	268	28-944	44	12-114	179	16-519
1933	25-132	98	28-509	269	28-945	45	12-115	180	16-520
1934	<b>Repealing</b>	99	28-510	270	28-946	46	12-116	181	16-521
1935	25-133	111	28-601	281	28-947	51	16-101	182	16-522
1936	25-134	112	28-602	282	28-948	52	16-102	183	16-523
1937	25-135	113	28-603	283	28-949	53	16-103	184	16-524
1938	25-136	114	28-604	284	28-950	54	16-104	185	16-525
1939	25-137	115	28-605	285	28-951	55	16-105	186	16-526
1940	25-138	116	28-606	286	28-952	56	16-106	187	16-527
1970	45-1401	117	28-607	287	28-953	61	13-301	188	16-528
1971	45-1402	118	28-608	291	28-954	62	13-302	189	16-529
1972	45-1403	119	28-609	292	28-955	63	13-303	190	16-530
1973	45-1404	120	28-610	293	28-956	64	13-304	191	16-531
1974	45-1405	121	28-611	294	28-957	65	13-305	192	16-532
1975	45-1406	122	28-612	295	28-958	66	13-306	193	16-533
1976	45-1407	123	28-613	296	28-959	67	13-307	194	16-534
1977	45-1408	124	28-614	301	28-1001	68	13-308	201	16-801
1978	45-1409	125	28-615	302	28-1002	69	13-309	202	16-802
1979	45-1410	126	28-616	303	28-1003	70	13-310	203	16-803
1980	45-1411	127	28-617	303a	28-1004	71	13-311	204	16-804
1981	45-1412	128	28-618	304	28-1005	72	13-312	205	16-805



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 24:</b>		<b>Title 24:</b>		<b>Title 25:</b>		<b>Title 25:</b>		<b>Title 25:</b>	
206	16-806	382	13-112	77	7-306	177	42-101	325	45-915
207	16-807	383	13-113	78	7-307	178	42-102	326	45-916
208	16-808	391	16-1801	79	7-308	179	42-103	327	45-917
211	16-1001	392	16-1802	79a	7-309	191	45-601	328	45-918
212	16-1002	393	16-1803	79b	7-310	192	45-602	329	45-919
213	16-1003	394	16-1804	79c	7-311	193	45-603	330	45-920
214	16-1004	395	16-1805	79d	7-312	194	45-604	331	45-921
215	16-1005	396	16-1806	80	7-313	195	45-605	332	45-922
216	16-1006	397	16-1807	81	7-314	196	45-606	333	45-923
217	16-1007	398	16-1808	82	7-315	197	45-607	334	45-924
218	16-1008	399	16-1809	83	7-316	198	45-608	335	45-925
219	16-1009	400	16-1810	84	7-317	199	45-609	336	45-926
220	16-1010	401	16-1811	85	7-318	200	45-610	337	45-927
231	16-1601	402	16-1812	86	7-319	201	45-611	338	45-928
232	16-1602	403	16-1813	87	7-320	202	45-612	339	45-929
233	16-1603	404	16-1814	88	7-321	203	45-613	340	45-930
234	16-1604	411	16-1901	89	7-322	204	45-614	341	45-931
235	16-1605	412	16-1902	90	7-323	205	45-615	342	45-932
236	16-1606	413	16-1903	90a	7-324	206	45-616	343	45-933
237	16-1607	414	16-1904	91	7-325	207	45-617	344	45-934
238	16-1608	415	16-1905	92	7-326	208	45-618	351	38-101
239	16-1609	416	16-1906	93	7-327	209	45-619	352	38-102
240	16-1610	417	16-1907	94	7-328	210	45-620	353	38-103
241	16-1611	418	16-1908	95	7-329	221	45-701	354	38-104
251	13-401	419	16-1909	96	7-330	222	45-702	355	38-105
252	13-208	431	16-2001	97	7-331	223	45-703	356	38-106
261	16-901	432	16-2002	98	7-332	224	45-704	357	38-107
262	16-902	433	16-2003	99	7-333	225	45-705	358	38-108
263	16-903	434	16-2004	99a	7-401	226	45-706	359	38-109
264	16-904	435	16-2005	99b	7-402	227	45-707	360	38-110
265	16-905	<b>Title 25:</b>		99c	7-403	228	45-709	361	38-111
266	16-906	1	16-1501	99d	7-404	229	45-710	362	38-112
271	15-201	2	16-515; 1501	99e	7-405	231	18-101	363	38-113
272	15-202		note	99f	7-406	232-242		364	38-114
273	15-203	11	18-110	99g	7-407		R. '35, 49	365	38-115
274	15-204	21	5-101	99h	7-408		Stat. 39, ch.	366	38-116
275	15-205	22	5-102	99i	7-409	243	28, § 3 (B)	367	38-117
276	15-206	23	5-103	99j	7-410	244		368	38-118
276a	15-207	24	5-104	100	16-619	245		369	38-119
277	15-208	25	5-105	101	16-620	246		370	38-120
278	15-209	26	5-106	102	16-621	247		371	38-121
279	15-210	27	5-107	103	16-622	248		372	38-122
280	15-211	27a	5-108	104	16-623	249		373	38-123
281	15-212	28	5-109	105	16-624	250		374	38-124
282	15-213	29	5-110	106	16-625	251		375	38-125
283	15-214	29a	Repealing	107	16-626	261		376	38-126
284	15-301	30	5-111	108	16-627	262		381	16-1301
285	15-302	30a	5-112	109	16-628	263		382	16-1302
286	15-303	30b	5-113	110	16-629	264		383	16-1303
287	15-304	30c	5-114	110a	16-630	265		384	16-1304
288	15-305	30d	5-115	110b	16-631	266		385	16-1305
289	15-306	30e	5-116	110c	16-632	267		386	16-1306
290	15-307	31	5-201	110d	16-633	268		391	45-1001
291	15-308	32	5-202	110e	16-634	269		392	45-1002
292	15-309	33	5-203	110f	16-635	270		393	45-1003
293	15-310	34	5-204	110g	16-636	271		394	45-1004
294	15-311	35	5-205	110h	16-637	272		395	45-1005
295	15-312	36	5-206	110i	16-638	273		396	45-1006
296	15-313	41	16-601	110j	16-639	274		397	45-1007
297	15-215	42	16-602	110k	16-640	275		398	45-1008
298	15-216	43	16-603	110l	16-641	276		399	45-1009
299	15-217	44	16-604	110m	16-642	277		400	45-1010
300	15-218	44a	16-605	110n	16-643	278		401	45-1011
311	15-401	45	16-606	110o	16-644	279		402	45-1012
312	15-402	46	16-607	111	45-101	280		403	45-1013
313	15-403	47	16-608	112	45-102	281		404	45-1014
321	15-101	48	16-609	113	45-103	282		405	45-1015
322	15-102	49	16-610	114	45-104	283		406	45-1016
323	15-103	50	16-611	115	45-105	291		407	45-1017
324	15-104	50a	16-612	116	45-106	292	S. 5-302, 305	408	45-1018
325	15-105	50b	16-613	131	45-201	293	S. 5-308	409	45-1019
326	15-106	50c	16-614	132	45-202	294	5-301	411	7-901
327	15-107	50d	16-615	133	45-203	295	5-302	421	45-1101
328	15-108	50e	16-616	134	45-204	296	5-303	422	45-1102
329	15-109	50f	16-617	135	45-205	297	5-304	423	45-1103
330	15-110	50g	16-618	141	45-301	298	5-305	424	45-1104
331	15-111	51	7-201	142	45-302	299	5-306	431	1-601
341	12-201	52	7-202	143	45-303	300	5-307	432	1-602
342	12-202	53	7-203	144	45-304	301	S. 47-2302	433	1-605
343	12-203	54	7-204	145	45-305	302	5-308	434	1-606
344	12-204	55	7-205	146	45-306	303	5-309	435	1-607
345	12-205	56	7-206	147	45-307	304, 305	5-310	436	1-608
346	12-206	57	7-207	148	45-308	306	5-311	437	1-603
347	12-207	58	7-208	149	45-309	306a	5-312	438	1-604
348	12-208	59	7-209	150	45-401	306b	Repealing	439	1-610
351	16-1101	60	7-210	151	45-402	307	5-313	440	1-611
352	16-1102	61	7-211	152	45-403	308	5-314	441	1-612
353	16-1103	62	7-212	153	45-404	309	5-315	442	1-613
361	16-1401	63	7-213	154	45-405	311	45-901	443	1-616
362	16-1402	64	7-214	155	45-406	312	45-902	444	1-617
363	16-1402 note	65	7-215	156	45-407	313	45-903	445	1-618
371	13-101	66	7-216	157	45-408	314	45-904	446	1-619
372	13-102	67	7-217	158	45-409	315	45-905	447	1-620
373	13-103	68	7-218	159	45-410	316	45-906	448	1-621
374	13-104	69	7-219	160	45-411	317	45-907	449	1-622
375	13-105	70	7-220	161	45-412	318	45-908	450	1-623
376	13-106	71	7-221	171	45-501	319	45-909	451	1-624
377	13-107	72	7-301	172	45-502	320	45-910	452	1-614
378	13-108	73	7-302	173	45-503	321	45-911	453	1-615
379	13-109	74	7-303	174	45-504	322	45-912	454	1-625
380	13-110	75	7-304	175	45-505	323	45-913	455	1-626
381	13-111	76	7-305	176	45-506	324	45-914	456	1-627



## CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
<b>Title 25:</b>		<b>Title 26:</b>		<b>Title 26:</b>		<b>Title 27:</b>		<b>Title 29:</b>	
457 1-628		45 43-322		132 43-1005		72 28-2012		81 20-111	
458 1-609		46 43-323		133 43-1006		73 28-2013		82 20-112	
459 R. '35, 49		47 43-324		134 43-1007		81 28-2101		83 20-113	
Stat. 431,		48 43-325		151 43-1201		82 28-2102		84 20-114	
ch. 332, § 4		49 43-326		152 43-1202		83 28-2103		85 20-115	
471 5-501		50 43-327		153 43-1203		84 28-2104		86 20-116	
472 5-502		51 43-328		154 43-1204		85 28-2105		87 20-117	
473 5-503		52 43-329		155 43-1205		86 28-2106		88 20-118	
474 5-504		53 43-330		156 43-1206		87 28-2205		89 20-119	
475 5-505		54 43-402		157 43-1207		<b>Title 28:</b>		101 20-201	
476 Repealing		55 43-403		161 <b>Obsolete</b>		1 10-101		102 20-202	
481 45-1201		56 43-404		162 44-204		2 10-102		103 20-203	
482 45-1202		57 43-405		163 44-205		3 10-103		104 20-204	
483 45-1203		58 43-406		164 44-206		4 10-104		105 20-205	
491 45-1301		59 43-407		165 44-207		5 10-105		106 20-206	
492 45-1302		60 43-408		166 44-213		6 10-106		107 20-207	
493 45-1303		61 43-409		166a 44-214		7 10-107		108 20-208	
494 45-1304		62 43-410		167 44-208		8 10-108		109 20-209	
501 5-401		63 43-411		168 44-209		9 10-109		110 20-210	
502 5-402		64 R. '35, 49		169 44-215		10 10-110		111 20-211	
503 5-403		Stat. 884,		171 43-1401		11 10-111		112 20-212	
504 5-404		ch. 742, § 3		172 43-1101		12 10-112		113 20-213	
505 5-405		65 43-412		173 43-1102		13 10-113		114 20-214	
506 5-406		66 43-413		174 43-1103		14 10-114		115 20-215	
507 5-407		67 43-414		175 43-1104		15 10-115		116 20-216	
508 5-408		68 43-415		176 43-1105		16 10-116		117 20-217	
509 5-409		69 43-416		177 43-1106		17 10-117		118 20-218	
510 5-410		70 43-417		178 43-1402		18 10-118		119 20-219	
511 5-411		71 43-418		179 43-1403		19 10-119		131 20-301	
521 5-412		72 43-419		180 43-1404		20 10-120		132 20-302	
522-526 R. '38, 52		73 43-420		181 43-1405		21 10-121		133 20-303	
Stat. 802,		74 43-421		182 43-1406		22 10-122		134 20-304	
ch. 534, § 15		75 R. '35, 49		183 43-1407		23 10-123		135 20-305	
5-415 note		Stat. 882,		184 43-1408		24 10-124		136 20-306	
R. '38, 52		ch. 742, § 1		185 43-1409		25 10-125		137 20-307	
Stat. 802,		76 43-422		186 43-1410		26 10-126		138 20-308	
ch. 534, § 15		77 43-501		187 43-1411		27 10-127		139 20-309	
531 5-413		78 43-502		188 43-1412		28 10-128		140 20-310	
532 5-414		79 43-503		189 43-1413		29 10-129		141 20-311	
533 5-415		80 43-601		190 43-1414		30 10-130		142 20-312	
534 5-416		81 43-602		191 43-1415		31 10-131		151 20-401	
535 5-417		82 43-603		192 43-1416		32 10-132		152 20-402	
536 5-418		83 43-604		193 43-1417		33 10-133		153 20-403	
537 5-419		84 43-605		194 43-1107		34 10-134		154 20-404	
538 5-420		85 43-606		195 43-1108		35 10-135		155 20-405	
539 5-421		86 43-701		196 43-1109		36 10-136		161 18-301	
540 5-422		87 43-702		<b>Title 27:</b>		37 10-137		162 18-302	
541 5-423		88 43-703		1 28-2203		38 10-138 note		163 18-303	
542 5-424		89 43-704		2 28-2204		<b>Title 29:</b>		164 18-304	
543 5-425		89a 43-705		3 28-2201		1 19-401		165 18-305	
544 5-426		89b 43-706		4 28-2202		2 19-402		171 18-401	
545 5-427		89c 43-707		11 28-1801		3 19-403		172 18-402	
546 5-428		89d 43-708		12 28-1802		4 19-404		173 18-403	
547 5-428 note		89e 43-709		13 28-1803		5 19-405		174 18-404	
<b>Title 26:</b>		89f 43-710		14 28-1804		6 19-406		175 18-405	
1 43-101		89g 43-711		15 28-1805		7 19-407		176 18-406	
2 43-102		89h 43-711 note		16 28-1806		8 19-408		177 18-407	
3 43-103		90-94 R. '35, 49		17 28-1807		9 19-409		178 18-408	
4 43-104		Stat. 885,		21 28-1901		10 19-410		191 18-501	
5 43-105		ch. 742, § 2		22 28-1902		11 19-411		192 18-502	
6 43-106		95 43-712		23 28-1903		12 19-101		193 18-503	
7 43-107		96 43-713		24 28-1904		22 19-102		194 18-504	
8 43-108		97 43-801		25 28-1905		23 19-103		195 18-505	
9 43-109		98 43-802		26 28-1906		24 19-104		196 18-506	
10 43-110		99 43-803		27 28-1907		25 19-105		197 18-507	
11 43-111		100 43-804		28 28-1908		26 19-106		198 18-508	
12 43-112		101 43-805		29 28-1909		27 19-107		199 18-509	
13 43-113		102 43-806		30 28-1910		28 19-108		200 18-510	
14 43-114		103 43-807		31 28-1911		29 19-109		201 18-511	
15 43-115		104 43-808		32 28-1912		30 19-110		202 18-512	
16 43-116		105 43-901		33 28-1913		31 19-111		203 18-513	
17 43-117		106 43-902		34 28-1914		41 19-201		204 18-514	
18 43-118		107 43-903		35 28-1915		42 19-202		205 18-515	
19 43-119		108 43-904		36 28-1916		43 19-203		206 18-516	
20 43-120		109 43-905		37 28-1917		44 19-204		207 18-517	
21 43-121		110 43-906		38 28-1918		45 19-205		208 18-518	
22 43-122		110a 43-907		39 28-1919		51 19-301		209 18-519	
23 43-123		110b 43-908		40 28-1920		52 19-302		210 18-520	
24 43-301		111 43-909		41 28-1921		53 19-303		211 18-521	
25 43-302		112 43-910		42 28-1922		54 19-304		212 18-522	
26 43-303		113 43-911		43 28-1923		55 19-305		213 18-523	
27 43-304		114 43-1001		44 28-1924		56 19-306		214 18-524	
28 43-305		115 43-1002		45 28-1925		57 19-307		215 18-525	
29 43-306		116 43-204		46 28-1926		58 19-308		216 18-526	
30 43-307		117 43-205		47 28-1927		59 19-309		217 18-527	
31 43-308		118 43-1003		48 28-1928		60 19-310		218 18-528	
32 43-309		119 43-913		49 28-1929		61 19-311		219 18-529	
33 43-310		120 43-401		50 28-1930		62 19-312		220 18-530	
34 43-311		121 43-206		61 28-2001		63 19-313		231 18-601	
35 43-312		122 44-202		62 28-2002		71 20-101		232 18-602	
36 43-313		123 44-203		63 28-2003		72 20-102		233 18-603	
37 43-314		124 43-207		64 28-2004		73 20-103		234 18-604	
38 43-315		125 43-208		65 28-2005		74 20-104		235 18-605	
39 43-316		126 43-201		66 28-2006		75 20-105		236 18-606	
40 43-317		127 43-202		67 28-2007		76 20-106		237 18-607	
41 43-318		128 43-203		68 28-2008		77 20-107		238 18-608	
42 43-319		129 43-912		69 28-2009		78 20-108		239 18-609	
43 43-320		130 43-209		70 28-2010		79 20-109		240 18-610	
44 43-321		131 43-1004		71 28-2011		80 20-110		241 18-611	



CODE OF 1929 AND SUPPLEMENT—Continued

Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940	Section	D. C. 1940
Title 29:		Title 29:		Title 29:		Title 29:		Title 29:	
242	18-612	265	20-605	286	18-706	297	18-717	308	20-705
251	20-501	266	20-606	287	19-707	298	18-718	309	20-706
252	20-502	267	20-607	288	18-708	299	18-719	310	20-707
253	20-503	268	20-608	289	18-709	300	18-720	311	20-708
254	20-504	269	20-609	290	18-710	301	18-721	312	20-709
255	20-505	270	20-610	291	18-711	302	18-722	313	20-710
256	20-506	281	18-701	292	18-712	303	18-723	314	20-711
261	20-601	282	18-702	293	18-713	304	20-701	315	20-712
262	20-602	283	18-703	294	18-714	305	20-702	316	20-713
263	20-603	284	18-704	295	18-715	306	20-703	317	20-714
264	20-604	285	18-705	296	18-716	307	20-704	318	20-715



# STATUTES AT LARGE

## VOLUME 1

Date	Page	Chapter	Section	D. C. 1940
1790				
July 16...	139	28	1-6	Pages XXXI, XXXII.
1791				
Mar. 3...	214	17	-----	Page XXXII.
1792				
Apr. 2...	248	16	9	13-202; 19-410, 411.

## VOLUME 2

Date	Page	Chapter	Section	D. C. 1940
1801				
Feb. 27...	103 107	15	1-11 12	Pages XXXIII, XXXIV. 11-501; pages XXXIII, XXXIV.
Mar. 3...	107 115	----- 24	13-16 1-9	Pages XXXIII, XXXIV. Obsolete.
1802				
Apr. 29...	166	31	24	S. 11-301, 305.
May 3...	193	52	1, 2	S. 13-108 to 111.
	194	52	3	S. 11-312.
	194	52	4	S. 15-201 et seq.
	194	52	5	S. 16-301 et seq.
	194	52	6	S. 3-110; S. 47-701, 1201.
	194	52	7	Obsolete.
	194	52	8	Repealing.
	195	52	9	S. 47-2301 et seq.
	195	52	10	Obsolete.
	195	52	11	S. 47-1101 et seq.
	195	52	12	Obsolete.
	195	52	13	S. 39-101 et seq.
	195	53	1-11	Pages XXXIV, XXXV.
1803				
Mar. 3...	237	31	1-17	S. 28-2601 to 2610.
1805				
Mar. 3...	332	32	1-14	Pages LXIX to LXXI.
1809				
Mar. 3...	537	30	1-5	Page LXXI.
1812				
May 4...	721	75	1-11	Pages XXXV to XXXVII.
July 1...	771	117	1-13	Pages XXXVII to XXXIX.

## VOLUME 3

Date	Page	Chapter	Section	D. C. 1940
1820				
May 15...	583	104	1-17	Pages XXXIX to XLIII.
1823				
Mar. 1...	743	24	1-17	S. 11-701 et seq.

## VOLUME 4

Date	Page	Chapter	Section	D. C. 1940
1825				
Mar. 3...	94 94 101	18 25 52	----- ----- -----	S., U. S. C., title 32, § 31 et seq. S. 11-301 et seq. 47-807.
1826				
Mar. 3...	140	10	-----	Page LXXII.
May 20...	183	111	1-3	Page LXXII.
	186	131	-----	S. 11-312.

## VOLUME 4—Continued

Date	Page	Chapter	Section	D. C. 1940
1830				
May 31...	426	229	1-5	Page LXXII.
1832				
May 25...	517	105	1, 2	Page LXXII.
May 31...	520	112	1-3	S. 45-401 et seq.
	521	113	1-16	Obsolete.
	525	114	-----	S. 11-312.

## VOLUME 5

Date	Page	Chapter	Section	D. C. 1940
1838				
July 7...	306 309	192 212	1-8 1, 2	S. 11-322; S. 23-101 et seq. Obsolete.
1839				
Feb. 20...	318	30	1-7	S. 22-1102 to 1104.
1842				
July 27...	497	82	1, 2	Page LXXIII.

## VOLUME 9

Date	Page	Chapter	Section	D. C. 1940
1846				
July 9...	35	35	1-6	Page XLVI.
1848				
May 17...	223	42	1-17	Pages XLIII to XLVI.
1849				
Mar. 3...	775	128	10	47-808.

## VOLUME 10

Date	Page	Chapter	Section	D. C. 1940
1855				
Mar. 2...	633	145	1, 2	Page LXXXIII.

## VOLUME 11

Date	Page	Chapter	Section	D. C. 1940
1856				
Aug. 11...	32	84	1-6	Page LXXXIII.
1857				
Feb. 16...	161	46	1	31-1001.

## VOLUME 12

Date	Page	Chapter	Section	D. C. 1940
1861				
Mar. 2...	220	84	10	1-808.
1862				
May 3...	383	63	1-8	Pages XLVII, XLVIII.
May 21...	405	82	1-8	Page LXXIV.



PARALLEL REFERENCE TABLES  
STATUTES AT LARGE—Continued

VOLUME 12—Continued				
Date	Page	Chapter	Section	D. C. 1940
1863				
Mar. 3...	762	91	1	11-301.
	763	91	2	S. 11-301, 401 to 403.
	763	91	3	S. 11-305, 322.
	763	91	4-6	11-312.
	763	91	7	S. 11-313, 316.
	764	91	8	S. 11-320; S. 13-221.
	764	91	9	S. 13-221.
	764	91	10	S. 11-315.
	764	91	11	S. 17-101.
	764	91	12	S. 17-104.
	764	91	13	Saving Clause.
	764	91	14, 15	Obsolete.
	764	91	16	Repealing.
	765	91	17, 18	Temporary.
	799	106	1-13	Pages XLVII to L.

VOLUME 13				
Date	Page	Chapter	Section	D. C. 1940
1864				
Apr. 8...	45	52	-----	31-1002.
1865				
Feb. 23...	436	50	1	31-1001.

VOLUME 14				
Date	Page	Chapter	Section	D. C. 1940
1867				
Jan. 8....	375	6	1-10	Page L.

VOLUME 15				
Date	Page	Chapter	Section	D. C. 1940
1867				
Mar. 29...	27	No. 26	1, 2	Page LI.

VOLUME 16				
Date	Page	Chapter	Section	D. C. 1940
1870				
May 24...	139	111	4	47-809.
June 17...	153	133	1	11-601, 602.
	154	133	2	11-601, 620 to 622.
	154	133	3	11-616.
	154	133	4	11-606; S. 11-610 to 614.
	154	133	5	11-606.
	154	133	6	11-623, 624.
	155	133	7	S. 11-615, 620.
	155	133	8	S. 17-103.
	155	133	9	11-623.
	154	133	10	11-601.
	155	133	11	S. 17-103.
	155	133	12	S. 45-402.
	155	133	13	11-601, 606.
	155	133	14	11-624.
	155	133	15	11-606.
	155	133	16	S. 23-101, 102.
	156	133	17	S. 11-1001.
	156	133	18	S. 11-1002.
	156	133	19	Obsolete.
	157	133	20	11-602.
	157	133	21	S. 11-614.
	157	133	22	Effective date.
June 21...	158	135	1	32-201.
	158	135	2	32-202.
	158	135	3	32-203.
	158	135	4	32-204.
	158	135	5	32-205.
	158	135	6	32-206.
	159	135	7	32-207.
	159	135	8	32-211.
	160	141	4	11-501.
1871				
Feb. 21...	419	62	1-41	Pages LI to LVI.

VOLUME 18				
Date	Page	Chapter	Section	D. C. 1940
1874				
Mar. 28...	25	72	-----	Special.
June 20...	116	337	1-10	Pages LVI to LVIII.
	116	337	2	1-218, 220, 301, 302, 308, 802, 803, 901; 43-1503, 1506, 1521; 47-305, 722, 1016
				1-205.
June 23...	117	337	3	S. 11-312.
	204	454	-----	32-317.
	223	455	1	S. 43-501.
	277	480	1	43-605.
	278	480	2	43-1201.
	278	480	3	43-1203.
	278	480	4	43-1204.
	278	480	5	S. 43-601, 1207.
	278	480	6	S. 43-603.
	278	480	7-9	43-605.
	279	480	10	S. 43-1207.
	279, 280	480	11, 12	43-1205.
	280	480	13, 14	22-3116.
	280	480	15	S. 3-408.
	280	480	16	6-102.
Dec. 26...	283	490	-----	Temporary.
	293	8	-----	
1875				
Feb. 20...	332	94	-----	Temporary.
Mar. 1...	337	117	-----	1-235.
Mar. 3...	374	130	-----	11-329.
	419	131	13	Temporary.
	501	162	1-18	Temporary.
	508	168	2	47-805.
	508	169	-----	Special.
	511	175	-----	Special.

VOLUME 19				
Date	Page	Chapter	Section	D. C. 1940
1876				
Mar. 30...	9	40	1-16	Special.
Apr. 27...	38	85	1-16	Special.
May 3....	49	90	1	32-802.
	49	90	2	32-805.
	49	90	3	32-808.
	49	90	4	32-809.
	50	90	5	32-810.
	50	90	6	32-811.
	50	90	7	32-812.
	50	90	8	32-815, 908.
	51	90	9	32-816, 909.
	51	90	10	32-817.
	51	90	11	32-818.
	51	90	12	32-819.
	51	90	13	32-822.
	51	90	14	32-807.
	52	90	15	32-806, 904.
	52	90	16	32-804.
	52	90	17	Repealing.
May 25...	56	114	1, 2	Special.
June 30...	64	156	6	S. 26-101.
July 12...	83	180	1-17	Temporary.
	87	180	18	43-1522.
	88	180	19	Repealing.
Aug. 15...	202	296	-----	Temporary.
	202	297	1-3	S. 16-1301.
1877				
Jan. 16...	222	22	-----	Obsolete.
	222	23	-----	S. 45-702, 704.
Jan. 20...	224	31	1-3	Temporary.
Feb. 5....	230	50	1-5	Temporary.
Feb. 27...	253	69	2	4-412; 11-306.
Mar. 3...	347	105	-----	32-401, 405.
	396	117	1	S. 47-501.
	396	117	2	R. '79, 20 Stat. 410, ch. 182.
	396	117	3, 4	S. 47-1209.
	397, 398	117	5	S. 47-1001 to 1005.
	398	117	6	S. 47-1006.
	398	117	7	S. 47-1301, 1302.
	399	117	8	47-801.
	399	117	9	S. 47-1207 note.
	399	117	10	S. 47-1203.
	400	117	11	S. '02, 32 Stat. 619, ch. 1352, § 6, par. 8.
	400	117	12	Temporary.
	401	117	13	S. 47-301, 309, 310.
	401	117	14	Repealing.
	402	117	15	1-105.
	402	117	16	S. 47-405.
	402	117	17	Temporary.
	402	117	18	47-801.



## STATUTES AT LARGE—Continued

VOLUME 20					VOLUME 21—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1877					1879				
Dec. 14...	7	1	-----	S. '19, 41 Stat. 209, ch. 24, § 1.	June 21...	23	33	1, 2	Special.
1878					June 27...	35	38	-----	1-230.
Feb. 4...	23	12	1, 2	R. '01, 31 Stat. 1434, ch. 854, § 1636.		36	41	1-3	Temporary.
	23	12	3	1-106.		36	41	4	S. 47-1001.
	23	12	4	R. '01, 31 Stat. 1434, ch. 854, § 1636.	1880				
Apr. 3...	34	48	1, 2	Temporary.	Apr. 6...	71	47	1, 2	S. 22-1601.
	34	48	3	S. 47-1209.		71	47	3	S. 22-1602.
Apr. 17...	36	60	-----	S. 22-3104.		71	47	4	S. 22-1604.
Apr. 29...	39	68	1	S. 22-1501.		71	47	5	S. 22-1601, 1607, 1608.
	39	68	2	S. 22-1503.	June 4...	156	121	1	32-803.
	39	69	-----	45-501.		157	121	1	32-1002.
Apr. 30...	40	72	-----	Temporary.	June 8...	162	121	2	S., U. S. C., title 31, § 23.
May 28...	87	145	-----	Temporary.		165	134	-----	Temporary.
May 31...	88	147	-----	Special.		166	137	1	S. 11-314.
June 4...	91	154	-----	S. '98, 30 Stat. 766, ch. 30, § 6.		167	137	2	R. '01, 21 Stat. 1434, ch. 854, § 1636.
June 7...	100	162	1	S. 11-701, 703, 704.	June 16...	167	137	3	Repealing.
	100	162	2	Temporary.		270	235	-----	24-420.
	100	162	3	S. '01, 31 Stat. 1195, ch. 854, § 41.		275	235	-----	31-1009.
	100	162	4	S. '01, 31 Stat. 1190, 1195, ch. 854, §§ 3, 41.	Apr. 24...	284	243	1-10	Temporary.
	100	162	5	S. 1-401, 402, 501, 502.		304	No. 25	1	6-111.
	100	162	6	Repealing.		305	No. 25	2	6-112.
June 11...	102	180	1	1-101 note, 102, 103; pages LVIII to LXI.	1881				
	102	180	2	1-102 note; pages LVIII to LXI.	Jan. 25...	318	27	-----	1-724.
	103	180	2	1-201, 203, 206 to 210, 802, 803; R. 35.	Jan. 28...	321	29	-----	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	103	180	3	49 Stat. 430, ch. 332, § 1 <sup>1</sup>	Feb. 23...	331	72	-----	Appropriation.
	104	180	3	1-103 note, 218, 801; pages LVIII to LXI, 43-1503, 1506, 1521	Mar. 1...	374	94	-----	Temporary.
	105	180	5	1-216, 219, 221, 234.	Mar. 2...	378	109	-----	Special.
	105	180	5	47-309; pages LVIII to LXI.	Mar. 3...	414	131	1-5	Special.
	106	180	5	7-601; pages LVIII to LXI.		459	134	1	32-813.
	106	180	5	7-602 to 604.		460	134	1	1-204; 47-301.
	107	180	5	1-212; 7-605.		462	134	1	7-1206.
	107	180	6, 7	Pages LVIII to LXI.		466	134	1	47-210.
	107	180	8	6-101; pages LVIII to LXI.		466	134	2-6	Special.
	107	180	9	6-104 to 106; pages LVIII to LXI.		513	159	-----	Special.
	107	180	10	6-107; pages LVIII to LXI.		513	160	1	Special.
	107	180	11	Pages LVIII to LXI.		513	160	2	47-804.
	108	180	12	1-238; pages LVIII to LXI.	VOLUME 22				
	108	180	13	47-102; pages LVIII to LXI.	Date	Page	Chapter	Section	D. C. 1940
	108	180	14, 15	Pages LVIII to LXI.	1881				
June 14...	131	194	1, 2	1-228.	Dec. 20...	1	2	-----	S. 28-616.
	132	195	-----	Special.	1882				
June 15...	134	213	1-18	S. 22-1612 to 1620.	Mar. 11...	29	32	-----	Special.
	137	215	1-14	S. 2-601 to 617.	Apr. 1...	40	61	-----	Special.
June 19...	173	323	1	47-2001.	May 17...	67	157	1	S. 26-301.
	173	323	2	47-2002.		67	157	2	S. 26-302.
	173	323	3	47-2003.	June 15...	104	220	1-3	Special.
	174	323	4	47-2004.	June 16...	105	222	3	47-811.
	174	323	5	47-2005.	June 27...	114	243	-----	Special.
	174	323	6	47-2006.	July 1...	126	258	1	9-106.
	174	323	7	1-230.		126	258	2	9-107.
	174	323	8	47-2007.		126	258	3	9-108.
	174	323	9	22-1111.		126	258	4	9-109.
	173	323	10	Repealing.		127	258	5	9-110.
	166	309	-----	Special.		127	258	6	9-111.
	173	321	1	S. 15-403.		127	258	7	9-112.
Dec. 23...	173	321	2	Repealing.		127	258	8	9-113.
	259	11	1-3	Temporary.		127	258	9	9-114.
1879						127	258	10	9-115.
Jan. 25...	264	22	1-3	S., U. S. C., title 26, §§ 2300 to 2314.		127	258	11	9-116.
Jan. 31...	277	38	-----	S. 28-616.		127	259	-----	S. 11-312.
Feb. 6...	282	49	1, 2	S. 30-117.		138	263	1	43-1203.
	283	50	-----	47-306, 1010.		139	263	1	1-304.
Feb. 25...	320	99	1	S. 11-301.		143	263	2	43-1502.
	320	99	2	S. 11-310, 313.		144	263	2	43-1504.
Feb. 27...	323	110	-----	Temporary.		144	263	3	47-310.
Mar. 3...	353	172	-----	Special.	July 6...	151	272	1, 2	S. 7-306, 307.
	353	174	-----	45-407.	July 12...	162	289	1, 2	S. 22-1801.
	395	182	1	32-402.	July 15...	168	294	1-3	Special.
	408	182	3	31-803.	Aug. 4...	218	385	-----	Special.
					Aug. 5...	243	389	1	4-201.
					Aug. 7...	343	435	1, 2	Special.
					1883				
					Jan. 19...	408	34	1, 2	Special.
					Jan. 31...	411	40	1-5	S. 22-1504 to 1507.
						412	41	1	S. 4-106.
						412	41	2	Repealing.
						412	41	3	S. 4-172.
						412	41	4	S. 4-103.
					Feb. 17...	420	48	1, 2	Special.
					Mar. 1...	432	60	1, 2	Special.
					Mar. 3...	470	95	1	1-818.
						470	95	2	47-310.

<sup>1</sup> Repealed in part.



## STATUTES AT LARGE—Continued

## VOLUME 22—Continued

Date	Page	Chapter	Section	D. C. 1940
1883				
Mar. 3...	529	124	-----	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	530	125	-----	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	530	126	-----	S. 23-402.
	568	137	1	S. 47-701.
	568	137	2	S. 47-702.
	568	137	3	S. 47-694.
	569	137	4	S. 47-704.
	569	137	5	47-703.
	569	137	6	S. 47-705.
	569	137	7	S. 47-706.
	569	137	8	S. 47-707.
	569	137	9	S. 47-708.
	570	137	10	S., U. S. C., title 5, § 673.
	570	137	11	S. 47-709.
	570	137	12	S. 47-710.
	570	137	13	S. 47-712.
	570	137	14	S. 47-606.
	571	137	15	Repealing.
	625	143	-----	31-1018.

## VOLUME 23

Date	Page	Chapter	Section	D. C. 1940
1884				
Mar. 13...	4	12	1, 2	S., U. S. C., title 15, § 261.
Apr. 23...	13	28	1	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	13	28	2	Repealing.
	13	28	3	Obsolete.
July 2....	64	143	1	S. 38-101, 103.
	64	143	2	S. 38-102.
	64	143	3, 4	S. 38-109.
	64	143	5	S. 38-110.
	65	143	6	S. 38-114.
	65	143	7	S. 38-115.
	65	143	8	S. 38-110.
	65	143	9	S. 38-116.
	65	143	10	S. 38-117.
	65	143	11	S. 38-118.
	66	143	12	S. 38-123.
	66	143	13	S. 38-124.
	66	143	14	Repealing and effective date.
July 4....	72	178	-----	Special.
July 5....	125	227	1	1-810.
	127	227	1	32-1001.
1885				
Feb. 13...	302	58	1	22-805, 806, 808; 32-201, 208.
	302	58	2	32-209.
	303	58	3	22-901.
	302	58	4	S. 22-2704.
Feb. 17...	307	126	1-3	S. 16-1201 to 1203.
Feb. 25...	313	145	1	1-816.
	314	145	1	32-1005.
	318	145	1	31-1105.
	319	145	1	43-1503, 1508, 1522, 1536; 47-107.
	319	145	2	Temporary.
Feb. 26...	335	166	-----	Special.
Mar. 2....	340	316	1, 2	S. 22-1601, 1602.
	340	316	3	S. 22-1703.
Mar. 3....	350	334	4	47-812.
	443	355	1, 2	R. '11, 36 Stat. 1168, ch. 231, § 297.

## VOLUME 24

Date	Page	Chapter	Section	D. C. 1940
1886				
Apr. 22...	14	58	-----	1-108.
June 21...	23	328	-----	Special.
	84	463	1-4	S. '16, 39 Stat. 163, ch. 127.
July 9....	130	757	-----	Appropriation.
Aug. 4....	218	894	-----	Special.
	252	902	1	47-208.
Aug. 5....	335	930	1-6	Special.
1887				
Jan. 17...	361	25	1	S. 20-302.
	361	25	2	S. 19-205.
Jan. 26...	364	41	-----	S. 47-1003.
	364	43	-----	47-810.
	364	44	-----	Special.
	365	45	1-3	S. 5-301 to 315.
	366	45	4	Repealing.

## VOLUME 24—Continued

Date	Page	Chapter	Section	D. C. 1940
1886				
Jan. 26...	366	46	1-7	R. '01, 31 Stat. 1434, ch. 854, § 1654.
	368	48	-----	S. 45-1407.
	368	49	1	1-224.
	369	49	2	1-225.
Feb. 23...	411	214	-----	47-813.
	413	217	1	Special.
	413	217	2	47-814.
Feb. 28...	414	219	-----	Special.
	424	270	-----	Special.
	427	272	1	2-1501.
	427	272	2	2-1502.
	427	272	3	2-1503.
	427	272	4	2-1504.
	427	272	5	2-1505.
	427	272	6	2-1506.
	427	272	7	2-1507.
	427	272	8	Effective date.
Mar. 3...	431	281	1, 2	S. 20-505.
	476	340	1	S. 45-1502.
	477	340	2	S. 45-1503.
	477	340	4	S. 45-1504.
	494	350	-----	Special.
	501	355	-----	1-807.
	560	379	-----	Temporary.
	571	389	1, 2	Appropriation.
	580	390	1, 2	1-229.
	633	394	-----	Special.
	636	397	5	22-1001.

## VOLUME 25

Date	Page	Chapter	Section	D. C. 1940
1888				
Mar. 9....	45	30	-----	45-1505.
Apr. 26...	94	204	1, 2	S. 22-1508.
June 18...	185	391	-----	S. 28-616.
June 19...	190	419	1-20	Special.
July 9....	201	478	2-6	Special.
	245	595	1	S. '26, 44 Stat. 208, ch. 53, § 1.
	245	595	2	32-902.
	246	595	3	32-903.
	246	595	4	32-905.
	246	595	5	32-904.
	246	595	6	32-907, 908.
	246	595	7	S. '26, 44 Stat. 208, ch. 53, § 1.
	246	595	8	32-913.
	246	597	-----	14-403.
	247	598	-----	R. '01, 31 Stat. 1434, ch. 854, § 1636.
July 18...	314	676	1	47-107.
	316	676	1	47-127.
	319	676	1	7-621.
	323	676	1	43-1401.
July 23...	340	694	1	4-116.
	340	694	2	4-117.
	340	694	3	4-118.
Aug. 1....	353	723	-----	S. 28-616.
	353	724	1-9	Special.
	355	725	1, 2	Special.
	355	726	-----	Special.
Aug. 9....	399	824	1-3	Special.
Aug. 11...	439	872	1, 2	Special.
Aug. 22...	446	912	1-5	Special.
Aug. 27...	451	916	1-3	S. 1-613 to 615.
	451	916	4	Repealing.
	451	916	5	S. 7-125.
	451	917	1-3	Special.
Oct. 12...	549	1090	1-16	S. 33-101 to 110.
	554	1095	1	32-101.
	554	1095	2	32-102.
	554	1095	3	32-103.
	554	1095	4	32-104.
	556	1097	1, 2	S. 47-1001 to 1009.
Oct. 18...	560	1196	1-19	Special.
1889				
Feb. 12...	659	133	1, 2	Special.
Feb. 15...	672	169	-----	R. '01, 31 Stat. 1434, ch. 854, § 1636.
Mar. 1....	749	308	1	Repealing.
	749	308	2	S. 11-312.
	749	308	3	S. 11-1417.
	750	308	4	S. 11-1405 to 1407.
	750	308	5	S. 11-1414.
	750	308	6	S. 11-1411 note.
	750	308	7	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	750	308	8	S. 11-1412.
	750	308	9	S. 11-1413.
	750	308	10	Effective date.
	772	328	1	39-101.



## STATUTES AT LARGE—Continued

VOLUME 25—Continued					VOLUME 26—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1889					1890				
Mar. 1	772	328	2	39-102.	Sept. 26	490	949	1	8-168.
	773	328	3	39-103.		490	949	2	Appropriation.
	773	328	4	39-104.		490	950		Special.
	773	328	5	39-105.	Sept. 27	492	1001	1	8-146.
	773	328	6	39-112.		492	1001	2-6	Special.
	773	328	7	39-201.		495	1001	7	8-148.
	773	328	8	39-202.	Oct. 1	625	1245		Special.
	773	328	9	39-204.		625	1246	1-33	S. 26-301, 304 to 336.
	774	328	10	39-106.		632	1246	34	21-310 note.
	774	328	11	S. 39-107.	Dec. 24	1113	No. 7		1-201, 202, 211.
	774	328	12-17	R. '09, 35 Stat. 630, ch. 146.	1891				
	774	328	18	39-111.	Jan. 19	718	76	1	Special.
	775	328	19	39-206.		719	76	2	7-1210.
	775	328	20, 21	39-207.		719	76	3, 4	Special.
	775	328	22	39-208.	Feb. 7	736	117		22-1120.
	775	328	23	39-210.	Feb. 28	789	382	1-16	Special.
	775	328	24	39-214.		797	385		S. 25-107.
	775	328	25	39-301.	Mar. 2	824	497	1, 2	S. 22-1508.
	775	328	26	S. 39-401.		824	499		Special.
	776	328	27	S. 39-402.		824	500		Special.
	776	328	28	39-403.	Mar. 3	841	531	1	S. 47-2339.
	776	328	29	39-405.		841	531	2	S. 26-605.
	776	328	30	S. 39-403.		841	531	3	S. 26-607.
	776	328	31	39-501.		848	536	1	11-601, 602, 606.
	776	328	32	39-502.		848	536	2	11-616.
	776	328	33	39-504.		848	536	3	S. 11-617, 618.
	777	328	34	39-505.		849	536	4	11-619; S. 17-103. <sup>1</sup>
	777	328	35	S. 39-506 to 510.		849	536	5	11-607.
	777	328	36	S., U. S. C., title 32, § 46.		850	536	6	11-601.
	777	328	37	39-512.		850	536	7	11-621, 623, 624.
	777	328	38	39-513.		850	536	8	Saving Clause.
	777	328	39	39-514.		868	540		5-204.
	778	328	40	39-601.		1064	546		47-112.
	778	328	41	39-602.		1103	563		Temporary.
	778	328	42	39-515.					
	778	328	43	39-607.					
	778	328	44	39-516.					
	778	328	45	39-603.					
	778	328	46	39-604.					
	779	328	47	39-605.					
	779	328	48	39-606.					
	779	328	49	39-608.					
	779	328	50	39-701, 702.					
	779	328	51	39-703.					
	779	328	52	R. '09, 35 Stat. 635, ch. 146.	1892				
	779	328	53	R. '09, 35 Stat. 635, ch. 146.	Feb. 9	2	5	1	S. 29-201.
	780	328	54	R. '09, 35 Stat. 635, ch. 146.		2	5	2	S. 29-237.
	780	328	55	39-802.		3	5	3	Right of Congress to alter, amend, or repeal.
	780	328	56	39-803.	Feb. 18	4	9		Special.
	780	328	57	39-804.	Mar. 21	10	19		22-1208.
	780	328	58	S. 39-805.	Mar. 31	13	30		47-601.
	780	328	59	39-803.	Apr. 5	14	34		22-3117.
	781	328	60	39-801.	Apr. 23	21	53	1	1-725.
	781	328	61	39-904.		21	53	2	2-1404.
	781	328	62	39-905.		21	53	3	1-726.
	781	328	63	Repealing.		21	53	4	1-727.
Mar. 2	794	370	1	S. 47-1301. <sup>1</sup>	Apr. 28	22	53	1-3	Repealing.
	797	370	1	44-209.		22	54	4	Temporary.
	802	370	1	1-812; S. 16-601. <sup>1</sup>		22	55		Repealing.
	807	370	1	S. 3-123.	Apr. 30	22	56	1-4	Special.
	808	370	2	Temporary.		23	57	1-5	Special.
	808	370	3	47-132.	May 11	29	65	1	4-601.
	808	370	4	Special.		29	65	2	4-602.
	872	392	1-3	Special.		29	65	3	4-603.
	962	411	1	31-1010; S. '90, 26 Stat. 392, ch. 837, §1. <sup>1</sup>		29	67		Special.
	1006	413	1-14	S. 26-601 to 611.	May 13	37	74		47-306, 1010.
					May 25	39	78		Special.
						40	79		Temporary.
					May 31	40	83	1, 2	S. 38-201 to 203.
					June 3	41	87	1, 2	Repealing.
					June 6	42	89	1-9	S. 2-301 to 331.
					June 15	51	119		Special.
					June 25	60	135	1	11-603.
						60	135	2	22-210.
						60	135	3	22-813.
						60	135	4	22-811, 812.
						61	135	5	22-814.
						61	135	6	22-810.
					July 5	65	143	1-4	Special.
						66	144	1-24	Special.
					July 6	86	152		Special.
					July 13	116	159	1, 2	S. 22-3204, 3205.
						116	159	3	S. 22-104.
						116	159	4, 5	S. 22-3207 to 3211.
						117	159	6	Repealing.
					July 14	151	171	1	47-112.
						154	171	1	21-105.
						160	171	1	4-119.
						162	171	1	6-108.
						167	171	2, 3	Appropriation.
					July 18	235	201	1, 2	Special.
					July 22	254	228	1, 2	R. '14, 38 Stat. 717, ch. 310, § 3.
						255	230	1-10	S. 7-301 to 330.
					July 23	261	236	1	S. 11-616.

<sup>1</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 27—Continued					VOLUME 28				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1892					1893				
July 23...	262	236	2	S. 11-622.	Dec. 21...	21	7	-----	Special.
July 26...	268	250	1, 2	S. 3-101.	1894				
	269	250	3	3-115.	Jan. 27...	33	22	-----	1-808.
	269	250	4	3-116.	Mar. 12...	40	35	1-3	S. 22-1601, 1602, 1604 to 1603, 1703.
	269	250	5	3-117.	Mar. 14...	44	40	-----	7-610.
	269	250	6	3-118.	May 11...	75	73	-----	S. 25-101 et seq.
	270	250	7	3-114 note.	May 25...	78	77	1, 2	S. 43-101 to 422.
	273	257	-----	Appropriation.	July 30...	160	172	1	11-204.
July 28...	319	312	1-6	Special.		161	172	2	11-205.
July 29...	322	320	1	22-3112.		162	172	3	11-206.
	322	320	2	22-3113.	July 31...	202	174	1	47-201.
	322	320	3	22-1109.	Aug. 2...	217	189	1-4	Special.
	322	320	4	22-1117.		218	189	5	44-208.
	323	320	5	S. 22-1107.		218	189	6, 7	Special.
	323	320	6	22-1107.	Aug. 3...	220	193	1, 2	Special.
	323	320	7	R. '35, 49 Stat. 651, ch. 546, § 4.	Aug. 6...	999	230	-----	47-817.
	323	320	8	22-3301.	Aug. 7...	244	232	1	1-729.
	324	320	9	22-1112.		246	232	1	1-212; 7-601 note.
	324	320	10	22-1110.		247	232	1	7-608.
	324	320	11	22-1114.		250	232	1	7-606; 44-204.
	324	320	12	S. '06, 34 Stat. 621, ch. 3615, § 1, which was R. '25, 43 Stat. 1125, ch. 443, § 16.		252	232	1	7-503; 8-149.
	324	320	13	22-3110.		254	232	1	31-1104.
	325	320	14	22-1113.		256	232	1	S. 43-1402 to 1408. <sup>1</sup>
	325	320	15	4-120; 22-3111.		257	232	1	6-113.
	325	320	16	22-1118.		262	232	2	Temporary.
	325	320	17	22-1108.	Aug. 11...	275	253	-----	S. 43-1511.
	325	320	18	22-109.		276	254	-----	Special.
	325	320	19	Repealing.	Aug. 13...	277	279	1, 2	Special.
	325	321	1, 2	29-105.	Aug. 14...	282	287	1	47-701.
	326	322	1-8	Special.		282	287	2	47-604.
	334	323	-----	Obsolete.		283	287	3	47-702.
Aug. 1...	341	353	1-24	Special.		283	287	4	47-704.
Aug. 5...	373	380	1	S. 32-317. <sup>2</sup>		283	287	5	S. 47-401 to 403.
Feb. 26...	394	No. 4	1	Temporary.		283	287	6	47-705.
	394	No. 4	2	1-226.		283	287	7	47-706.
Dec. 22...	405	6	1	S. 28-616.		283	287	8	47-707.
	405	6	2	Effective date.		284	287	9	S. 47-708.
1893						284	287	10	S. 47-709.
Jan. 6...	414	20	1, 2	Special.		284	287	11	S. 47-710.
Jan. 7...	415	23	-----	Special.		284	287	12	S. 47-712.
Jan. 14...	420	38	1, 2	Special.		285	287	13	47-606.
Feb. 9...	434	74	1	11-201.		285	287	14	47-209.
	435	74	2	S. 11-202.		285	287	15	S. '13, 37 Stat. 997, ch. 150, § 9.
	435	74	3	11-203.		285	287	16	Effective date.
	435	74	4	11-204.	Aug. 18...	417	301	-----	24-422.
	435	74	5	11-204.	Aug. 23...	488	308	-----	S. 11-1207.
	435	74	6	11-205.	Aug. 24...	501	328	1-3	S. 7-301 to 330.
	435	74	7	17-101.		501	329	-----	45-506.
	436	74	8	S., U. S. C., title 28, §§ 346, 347.	Jan. 27...	577	No. 9	-----	11-102.
	436	74	9	R. '27, 44 Stat. 1336, ch. 273, § 7.	Aug. 1...	588	No. 40	1	7-120.
	436	74	10	11-206.		588	No. 40	2	7-121.
	436	74	11	11-208.	1895				
	436	74	12	S. '08, 35 Stat. 544, ch. 228, § 29.	Jan. 7...	599	19	-----	Special.
	436	74	13	11-209.	Jan. 12...	614	23	73	6-106 note.
	436	74	14	S. 11-302.	Feb. 9...	650	78	-----	Appropriation.
	436	74	15	11-210, 331.	Feb. 11...	650	79	-----	1-107, 235; 43-1503, 1537; 44-209; 47-703 note; 49-302; page LXXV.
	436	74	16	Effective date.					R. '97, 29 Stat. 669, ch. 387.
	436	74	17	Repealing.	Feb. 13...	664	87	-----	
Feb. 13...	444	104	-----	Special.	Feb. 19...	668	100	1, 2	S. 11-703.
Feb. 18...	461	137	1-5	Special.		668	100	3	S. 17-104.
	462	139	-----	Special.		669	100	4-11	S. 16-301, 302.
Feb. 20...	464	143	-----	Special.		670	100	12-14	S. 11-725.
Feb. 24...	474	157	1	S. 28-2601, 2602.		670	100	15	S. 11-726.
	474	157	2	S. 28-2606.		670	100	16, 17	S. 11-727.
	474	157	3	S. 28-2608.		670	100	18	S. 11-728.
	474	157	4	S. 16-301.		670	100	19	S. 11-731.
	475	158	-----	Special.		670	100	20	S. 11-732.
	476	160	1, 2	Special.		670	100	21, 22	S. 11-731.
Feb. 25...	477	164	1, 2	Temporary.		671	100	23, 24	S. 11-744.
Feb. 27...	490	170	1-7	Special.		671	100	25	S. 11-745.
Mar. 2...	532	197	1	7-108.		671	100	26	S. 11-746.
	532	197	2	7-109.		671	100	27, 28	S. 11-748; S. 17-104.
	533	197	3	7-110.		671	100	29	S. 11-722.
	534	197	4	7-111.		671	100	30	Repealing.
	534	197	5	7-112.		682	130	1-6	Special.
	534-	197	6-19	R. '98, 30 Stat. 519, ch. 519, § 1.	Feb. 26...	686	132	1-3	S. 2-201 to 209-16-207 note.
	537					687	134	-----	S. 1-601.
Mar. 3...	541	199	1	S. 7-606.		689	138	-----	S. 1-602.
	543	199	1	1-725, 727; 2-1404; 43-1201, 1202, 1204; S. 43-601 to 43-603. <sup>2</sup>	Feb. 28...	689	138	2	S. 1-604.
	544	199	1	7-501, 706; 43-1529; R. '28, 45 Stat. 996, ch. 901, § 1. <sup>1</sup>		689	138	3	S. 1-617.
	546	199	1	S. 31-801.		690	133	5	S. 1-616.
	551	199	1	32-315.		690	139	6	S. 1-604.
	552	199	1	32-1003; S. 3-116.		690	138	7	S. 1-629.
	553	199	1	32-1004.		690	138	8	Repealing.
	554	199	2	Temporary.	Mar. 1...	693	144	-----	S. 31-101.
	563	204	1-21	S. 25-101 et seq.	Mar. 2...	700	148	-----	Special.
	591	208	1	1-317; S. 11-310 to 312, 1401 to 1419. <sup>2</sup>		709	164	1	S. 33-302, 303.
						709	164	2	S. 33-302, 304.
						710	164	3	S. 33-312.

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

## VOLUME 28—Continued

Date	Page	Chapter	Section	D. C. 1940
1895				
Mar. 2...	710	164	4	S. 33-308.
	710	164	5	S. 33-309.
	710	164	6-8	S. 33-301, 313, 314.
	710	164	9	S. 33-310.
	711	164	10	S. 33-311, 313, 314.
	711	164	11	S. 33-307.
	711	164	12	S. 33-305, 307.
	711	164	13	S. 33-104, 106 to 108.
	711	164	14	S. 33-319.
	711	164	15	Repealing.
	713	166	1-5	Special.
	717	167	1-25	Special.
	721	168	1-30	Special.
	740	172	1-3	S. 22-1701.
	747	176	1	S. 1-312; <sup>1</sup> S. 47-1209. <sup>2</sup>
	758	176	1	6-501; 32-311; S. 32-301 to 305. <sup>3</sup>
	764	176	2	Temporary.
	809	178	1-5	S. 7-801 to 806.
	810	178	6	S. 5-308; S. 47-2302.
	811	179	1-16	R. '21, 41 Stat. 1225, ch. 118, §33.
	964	192	1	36-310.
	964	192	2	36-311.

## VOLUME 29

Date	Page	Chapter	Section	D. C. 1940
1896				
Jan. 21...	2	5	-----	R. '98, 30 Stat. 519, ch. 519, § 1.
Feb. 7...	4	10	-----	Special.
	5	12	1	22-1105.
	5	12	2	22-1106.
Feb. 20...	10	25	1	4-601.
	10	25	1	4-602.
	10	25	3	4-603.
	11	27	-----	Special.
Mar. 28...	75	74	-----	R. '21, 41 Stat. 1225, ch. 118, § 33.
Apr. 24...	98	123	-----	47-721.
May 4...	112	154	1	31-901.
	113	154	2	31-902.
	113	154	3	31-902 note.
	113	154	4	31-903.
	113	154	5	31-904.
	113	154	6	31-905.
May 13...	118	177	1	S. 30-111.
	118	177	2	S. 30-106.
	118	177	3	S. 30-107.
	118	177	4	Temporary.
	118	177	5, 6	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	118	177	7	S. 30-113.
	119	177	8	S. 30-110; S. 33-112.
	119	177	9	S. 30-108, 114.
	120	177	10	R. '01, 31 Stat. 1434, ch. 854, § 1636.
	120	177	11	S. 30-114.
	120	177	12	Effective date.
	120	177	13	Repealing.
May 18...	122	194	1	S. 28-1921 to 1930.
	122	194	2	S. 28-1918.
May 19...	123	201	-----	S. 28-616.
	124	205	1	S. 44-101.
	124	205	2	S. 44-102.
	124	205	3	S. 44-103.
	125	206	1	6-401.
	125	206	2	6-402.
	126	206	3	6-403.
	126	206	4	6-404.
	126	208	1-5	S. 22-1702.
May 21...	128	214	-----	S. 42-101.
May 25...	138	245	-----	14-308.
May 28...	187	254	1-5	Special.
May 29...	191	270	-----	4-159.
May 30...	192	274	1, 2	R. '21, 41 Stat. 1225, ch. 118, § 33.
June 1...	193	303	1	S. 30-207.
	193	303	2	S. 30-201.
	193	303	3, 4	S. 30-208.
	193	303	5	S. 30-208, 209.
	193	303	6	Temporary.
	194	303	7	S. 30-210.
	194	303	8	S. 21-101.
	194	303	9	S. 21-102.
	194	303	10	S. 18-202.
	194	303	11	Repealing.
June 3...	198	313	1-16	S. 2-102 to 140.
	244	315	1	37-101.
	244	315	2	37-103.
	244	315	3	37-104.
	244	315	4	37-105.
	244	315	5	Temporary.
	246	317	1-3	Special.

## VOLUME 29—Continued

Date	Page	Chapter	Section	D. C. 1940
1896				
June 6...	251	335	1, 2	S. 43-1207.
	252	335	3	S. 43-601.
	252	335	4	S. 43-603.
	252	335	5	R. '09, 35 Stat. 703, ch. 250, § 1.
	252	335	6	Right of Congress to alter, amend, or repeal.
June 8...	264	372	1-15	Special.
	281	373	1	32-306.
June 10...	318	395	1-9	Special.
	320	395	10	44-215.
	320	395	11	S. 43-401.
	320	395	12	Right of Congress to alter, amend, or repeal.
June 11...	394	419	1	47-128, 303.
	396	419	1	S. 43-1201. <sup>2</sup>
	399	419	1	S. 43-301 to 303. <sup>3</sup>
	401	419	1	43-1101.
	404	419	1	S. 4-503; <sup>2</sup> S. 11-625. <sup>2</sup>
	405	419	1	S. 4-502 to 504, 507. <sup>2</sup>
	410	419	1	32-501, 1097.
	411	419	1	32-1008.
	413	419	2	Temporary.
1897				
Jan. 26...	499	94	1-3	Special.
	499	94	4	31-1024.
	500	96	1-3	Temporary.
Feb. 19...	536	264	1-7	S. 21-301 to 305.
Feb. 20...	578	267	1, 2	Special.
Feb. 25...	594	315	1-4	47-2321 note.
	595	315	5	Repealing.
Feb. 27...	600	341	-----	S. 11-1103.
	600	342	-----	Special.
Mar. 2...	607	360	-----	17-103.
	608	361	1-4	R. '04, 33 Stat. 14, ch. 156, § 9.
	619	364	-----	22-1305.
Mar. 3...	624	375	-----	Special.
	630	382	1-18	8-153.
	635	383	1-32	S. 35-901 to 917.
	668	387	1	R. '39, 53 Stat. 1408, ch. 691, § 3.
				S. '01, 31 Stat. 1276, ch. 854, § 554. <sup>2</sup>
	673	387	1	43-1102; S. 10 128 <sup>2</sup>
	677	387	1	4-179, 408.
	678	387	1	4-1405, 1406.
	679	387	1	S. 11-617, 1513. <sup>2</sup>
	683	387	1	32-1008.
	684	387	2	Temporary.
	692	390	-----	S. U. S. C., title 28, § 347.
	695	393	1	6-103.
	695	393	2	Effective date.
Feb. 20...	702	No. 16...	-----	10-137 note.

## VOLUME 30

Date	Page	Chapter	Section	D. C. 1940
1897				
June 4...	41	2	1	43-1102.
1898				
Jan. 25...	228	6	1-19	S. 27-105, 114 to 128.
	231	7	-----	Special.
	231	8	1-16	R. '40, 54 Stat. 154, ch. 131, § 1.
	231	8	17	Effective date.
	231	8	18	Repealing.
Feb. 17...	246	25	1	33-101.
	246	25	2	33-102.
	246	25	3	33-103.
	247	25	4	33-104.
	247	25	5	33-105.
	247	25	6	33-106.
	248	25	7	33-107.
	248	25	8	33-108.
	248	25	9	33-109.
	248	25	10	33-110.
Feb. 28...	250	32	1	47-1001.
	250	32	2	47-1002.
	250	32	3	47-1003.
	251	32	4	47-1005.
	252	32	4	R. '60, 31 Stat. 138, ch. 252. <sup>1</sup>
	252	32	5	47-1006.
	252	32	6	47-1007.
	252	32	7	47-1008.
	252	32	8	47-1009.
Mar. 17...	327	70	1, 2	Special.
Mar. 18...	328	72	1-6	Special.
Mar. 23...	344	89	-----	S. 11-607.
Apr. 9...	352	116	1, 2	Special.
Apr. 15...	357	166	1-8	Special.
May 2...	369	231	-----	Special.
May 5...	398	241	1	33-201.

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 30—Continued				
Date	Page	Chapter	Section	D. C. 1940
1898				
May 5	398	241	2	33-202.
	398	241	3	33-203.
	398	241	4	33-203 note.
May 7	399	245	1,2	Special.
May 11	404	293	1-5	S., U. S. C., title 34, § 856.
	405	295		S. 22-3207 to 3211
May 17	415	338	1-8	S. 22-1601 to 1608, 1703.
	416	338	9	Repealing.
June 7	747	No. 46		1-222.
June 8	434	394	1	11-501.
	434	394	1	S. 11-501.
	435	394	2	S. 11-503.
	435	394	3	S. 11-313; S. 19-312.
	435	394	4	S. 19-301 to 304.
	435	394	5	S. 19-309.
	436	394	6	S. 19-312.
	436	394	7	S. 18-607.
	437	394	8	Effective date.
	437	394	9	S. 20-403.
	437	394	10	14-404.
	437	394	11	S. 11-312.
	437	394	12	Repealing.
June 15	470	450	1-3	Special.
June 18	477	467	1	2-1401.
	477	467	2	2-1402.
	477	467	3	2-1403.
	477	467	4	2-1405.
	477	467	5	2-1406.
	477	467	6	2-1407.
	477	467	7	7-615.
	477	467	8	2-1408; 7-616.
	477	467	9	Effective date and repealing.
	478	468	1-23	Special.
June 24	487	495	1	11-1001 note.
	487	495	2	U. S. C., title 28, § 511.
	488	496	1,2	Special.
	489	496	3	4-112.
	489	496	4-6	Special.
June 25	489	497	1	S. 44-211.
	489	497	2	S. 44-210.
	490	497	3	S. 44-212.
	490	497	4	Repealing.
June 27	490	499	1-10	Special.
June 28	519	519	1	Repealing.
	519	519	2	Special.
	520	519	3	7-113.
	520	519	4	Special.
	520	519	5	7-114.
	520	519	6	7-115.
June 30	526	540	1	47-112, 123.
	532	540	1	7-106.
	533	540	1	S. 10-128. <sup>1</sup>
	538	540	1	S. 43-301, 401. <sup>1</sup>
July 1	570	543	1	8-110.
	570	543	2	8-108.
	570	543	3	5-204.
	570	543	4	8-127.
	570	543	5	8-135.
	571	543	6	8-143.
	571	543	7	Repealing.
	624	546	1	31-1007.
	635	546	1	32-316.
July 7	664	571	1	43-1103.
	666	571	1	1-215; 47-602; S. 11-1507; <sup>2</sup> S. 21-307. <sup>2</sup>
	719	579	1-3	Special.
July 8	721	635	1-3	S. 43-1510 to 1517.
	723	638		22-1107, 3112, 3301.
	724	638		22-1112.
	724	639	1	S. 11-606.
	724	639	2	S. 24-404.
	724	640	1	7-1101.
	724	640	2	7-1102.
	724	640	3	7-1103.
	725	640	4	7-1104.
	725	640	5	7-1105.
	725	641	1-23	Special.
	753	No. 59		43-1104.
Dec. 21	765	30	1-14	Obsolete.
	769	33	1	S. 45-706.
	770	33	2	Repealing.
	770	34		Special.
1899				
Jan. 12	785	47	1-19	S. 28-101 to 1007
	802	48	1-5	R. '06, 34 Stat. 385, ch. 3505, § 6.
Jan. 31	811	78	1-6	R. '03, 32 Stat. 1043, ch. 1006, § 1.
	811	78	7	S. 21-317.
	811	78	8	Repealing.
Feb. 2	812	79	1-4	R. '35, 49 Stat. 653, ch. 549, § 5.
	812	79	5	6-802 note.
	812	79	6	R. '35, 49 Stat. 653, ch. 549, § 5.
Feb. 10	834	150	1-6	Special.
	835	151		Temporary.
	835	152		Appropriation.
Feb. 18	838	164		Appropriation.
Feb. 21	845	179		Special.

VOLUME 30—Continued				
Date	Page	Chapter	Section	D. C. 1940
1899				
Feb. 25	891	194	1-6	Special.
Feb. 28	906	218		1-804.
	908	220	1-3	Special.
	1390	No. 21	6-114	
Mar. 1	921	320	1-4	Special.
	922	322	1	S. 5-401.
	922	322	2	S. 5-402.
	922	322	3	S. 5-403.
	922	322	4	S. 5-405.
	922	322	5	S. 5-406.
	922	322	6	S. 5-407.
	922	322	7	S. 5-401 to 409.
	922	322	8	S. 5-409.
	923	323	1	5-501.
	923	323	2	5-502.
	923	323	3	5-503.
	923	323	4	5-504.
	959	326	1	6-901.
	959	326	2	6-902.
	959	326	3	6-903.
Mar. 3	1010	415	1,2	S. 22-3001.
	1012	417	1	22-1609 to 1612.
	1012	417	2	22-1613.
	1012	417	3	22-1614, 1615.
	1012	417	4	S., U. S. C., title 16, § 704.
	1013	417	5	22-1616.
	1013	417	6	22-1617.
	1013	417	7	22-1618.
	1013	417	8	22-1619.
	1013	417	9	22-1620.
	1013	417	10	Repealing.
	1013	418	1,2	S. 25-107, 132.
	1046	422	1	1-728.
	1053	422	1	43-1107.
	1056	422	1	31-301.
	1057	422	1	4-115.
	1064	422	2	Temporary.
	1101	424	1	31-1020.
	1114	424	1	S. 19-312. <sup>2</sup>
	1222	427	1	S. 45-710. <sup>2</sup>
	1343	430		Special.
	1344	431	1-9	Special.
	1346	432	1	S. 22-1304.
	1346	432	2	10-121.
	1346	432	3	S. 22-1304.
	1346	433	1,2	Special.
	1353	440		Special.
	1372	455	1-3	Special.
	1373	456	1-23	Special.
	1376	457	1	47-401.
	1377	457	2	47-402.
	1377	457	3	47-403.
	1377	457	4	Repealing.
	1377	457	5	S. 47-2320.
	1377	458	1	9-101.
	1378	458	2	8-156; 9-102.
	1378	458	3	S. U., S. C. title, 33, § 305.
	1379	459		S. 16-1501.
	1380	461	1-14	Special.
	1383	462	1,2	Temporary.

VOLUME 31				
Date	Page	Chapter	Section	D. C. 1940
1900				
Jan. 30	2	4	1-3	Special.
Feb. 7	6	11		Special.
Feb. 8	6	12		Special.
Mar. 8	42	35		Special.
Apr. 23	138	252		Repealing.
Apr. 30	165	342	1-3	Special.
May 26	217	587	1	43-1301.
	218	587	2	43-1302.
	218	587	3	43-1303.
	218	588		Obsolete.
May 31	243	599	1	Special.
	248	599	2	7-117.
June 2	251	611	1-3	Special.
	251	612	1	S. 43-1512, 1513.
	252	612	2	43-1518.
	252	612	3	Temporary.
	252	612	4	Repealing.
June 4	264	621	1-7	Special.
June 5	266	715		32-815.
	267	715		32-806, 816.
	270	718	1-6	Special.
June 6	555	789	1	47-113.
	559	789	1	7-619.
	563	789	1	43-1106.
	568	789	1	1-812.
	578	789	2	Temporary.
	611	791	1	S., U. S. C., title 5, § 673. <sup>2</sup>

<sup>b</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 31—Continued					VOLUME 32—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1900					1902				
June 6...	613	791	1	9-117.	Apr. 29...	175	638	6	2-206.
	620	791	1	S. 31-1012. <sup>1</sup>		175	638	7	2-207.
	663	806	7, 8	47-818.		175	638	8	2-208.
	664	807		3-111, 112.		175	638	9	2-209.
	665	807		3-113.		175	638	10	Repealing.
	665	808		S. 47-1209. <sup>1</sup>	May 22...	202	819		47-2321 note.
	665	809	1-13	Special.	June 2...	284	980	1, 2	Temporary.
	668	810	1-14	Special.	June 20...	393	1136	1	43-1402.
	671	811		39-205.		393	1136	2	43-1403.
	671	812		Special.		394	1136	3	43-1404.
1901						394	1136	4	43-1405.
Jan. 25...	740	166		Special.		395	1136	5	43-1406.
	740	167		Special.		395	1136	6	43-1407.
Jan. 28...	744	183		S. 11-606.	June 30...	395	1136	7	43-1408.
Feb. 5...	759	199		Special.		520	1329	1 (3), (5)	S. 11-701.
Feb. 6...	761	218	1-4	Special.		521	1329	1 (9)	S. 11-703.
	762	219		Special.		521	1329	1 (12)	11-724.
Feb. 11...	766	352		Temporary.		521	1329	1 (13)	11-725.
Feb. 12...	767-771	353	1-9	Special.		521	1329	1 (26)	11-741.
	772	353	10	7-1211.		521	1329	1 (27)	S. 11-701.
	772	353	11	7-508.		521	1329	1 (29)	11-743.
	773	353	12	7-507.		521	1329	1 (31)	S. 11-723; S. 17-104.
	773	353	13	Temporary.		521	1329	1 (33)	11-744.
	773	353	14	47-720.		521	1329	1 (35)	11-746.
	774	353	15	Special.		521	1329	1 (39)	S. 11-701.
	774	353	16	Repealing.		522	1329	1 (42)	11-601.
	774	353	17	Right of Congress to alter, amend, or repeal.		522	1329	1 (51)	11-610.
	774	354	1-4	Special.		522	1329	1 (62)	11-309.
	777	354	5	7-1212.		522	1329	1 (65)	11-312.
	777	354	6-8	Special.		523	1329	1 (72)	11-319.
	779	354	9	47-719.		523	1329	1 (73)	11-320.
	779	354	10-12	Special.		523	1329	1 (75)	S. 17-104.
	781	354	13	Repealing.		523	1329	1 (83)	11-322.
	781	354	14	Right of Congress to alter, amend, or repeal.		523	1329	1 (93)	16-1301.
Feb. 21...	799	461	1	S. 43-1512, 1513.		523	1329	1 (102)	13-105.
	800	461	2	Repealing.		523	1329	1 (104)	13-107.
Feb. 25...	809	478		32-904, 908, 909.		524	1329	1 (108)	13-111.
Feb. 28...	816	619		Temporary.		524	1329	1 (110)	13-113.
	819	623	1	4-102, 103, 106, 121, 122, 124, 125; S. 4-405. <sup>2</sup>		524	1329	1 (111)	16-1501.
	820	623	2	4-109.		524	1329	1 (115a)	21-310 note.
	820	623	3	4-110.		524	1329	1 (115b)	21-301.
	820	623	4	S. 4-503, 507; S. 11-625.		524	1329	1 (115c)	21-303.
	820	623	5	4-173.		524	1329	1 (115d)	21-304.
	820	623	6	S. 4-113.		524	1329	1 (115e)	21-305.
	820	623	7	Repealing.		525	1329	1 (115f)	21-401.
Mar. 1...	821	668	1, 2	Special.		525	1329	1 (119)	11-504.
	826	670	1	49-111.		525	1329	1 (121)	19-403.
	831	670	1	S. 43-310 to 314. <sup>1</sup>		526	1329	1 (129)	11-516.
	844	670	1	31-1008.		526	1329	1 (130)	19-301.
	846	671		Special.		526	1329	1 (140)	19-312.
Mar. 2...	956	815		Special.		526	1329	1 (142)	11-517.
Mar. 3...	1091	844	1	22-1609, 1610.		526	1329	1 (143)	11-518.
	1092	844	1	22-1611, 1612, 1614, 1615.		526	1329	1 (144)	11-519.
	1092	844	2	S. 22-1608.		527	1329	1 (146)	18-607.
	1093	844	3	S. 22-1602.		527	1329	1 (162)	21-210.
	1095	847	1	3-120.		527	1329	1 (163)	21-211.
	1095	847	2	3-121.		527	1329	1 (164)	21-212.
	1095	847	3	S. 3-101; S. 11-922, 924.		527	1329	1 (174)	11-401.
	1095	847	4	22-902.		527	1329	1 (175)	11-1505.
	1095	847	5, 6	S. 11-915.		527	1329	1 (176)	S. 11-1508.
	1096	847	7	S. 3-101; S. 11-925.		527	1329	1 (177)	11-1507.
	1096	847	8	Repealing.		527	1329	1 (178)	11-402.
	1189-	854	1-1643	See Code of 1901.		527	1329	1 (182)	S. 11-403.
	1436					527	1329	1 (183)	11-1001.
	1448	870		S. 19-301; S. 20-106.		527	1329	1 (185)	11-323.
Mar. 1...	1463	No. 13		S. 47-2303.		527	1329	1 (190)	11-1201.
VOLUME 32						528	1329	1 (207)	S. 11-1411.
1902						528	1329	1 (224)	11-204.
Jan. 31...	2	5	1	11-1407.		528	1329	1 (226)	S. 17-101.
	2	5	2	Repealing.		528	1329	1 (237)	12-103.
	2	6		Appropriation.		528	1329	1 (254)	16-102.
Feb. 4...	3	7		R. '07, 34 Stat. 890, ch. 914, § 5.		528	1329	1 (260)	18-501.
Feb. 14...	33	19	2	Repealing.		528	1329	1 (263)	20-302.
Feb. 15...	34	22		Temporary.		528	1329	1 (275)	20-203.
Feb. 21...	37	27		Appropriation.		528	1329	1 (289)	20-217.
Mar. 10...	60	146	1-8	Special.		528	1329	1 (290)	20-106.
Mar. 11...	63	181		43-1201.		529	1329	1 (293)	20-219.
Mar. 20...	74	229	1-3	R. '40, 54 Stat. 154, ch. 131, § 1.		529	1329	1 (297)	20-117.
Mar. 22...	88	273		45-406.		529	1329	1 (312)	18-404.
Apr. 28...	152	594	1	4-206; 11-1104.		529	1329	1 (317)	18-301.
Apr. 29...	173	638	1	2-201.		529	1329	1 (319)	18-303.
	173	638	2	2-202.		529	1329	1 (321)	18-305.
	174	638	3	2-203.		529	1329	1 (327)	20-501.
	174	638	4	2-204.		529	1329	1 (337)	18-510.
	174	638	5	2-205.		529	1329	1 (351)	18-527.
						529	1329	1 (362)	20-602.
						529	1329	1 (363)	20-603.
						529	1329	1 (365)	20-605.
						530	1329	1 (379)	18-707.
						530	1329	1 (383)	18-711.
						530	1329	1 (386a)	18-715.
						530	1329	1 (397)	45-1503.
						530	1329	1 (399)	13-301.
						530	1329	1 (412)	16-1701.
						530	1329	1 (438)	28-2604.
						530	1329	1 (454)	16-310.
						530	1329	1 (455)	16-311.

<sup>2</sup> Superseded in part.



PARALLEL REFERENCE TABLES  
STATUTES AT LARGE—Continued

VOLUME 32—Continued					VOLUME 32—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1902					1902				
June 30...	530	1329	1 (457)	16-313.	June 30...	542	1329	1 (1182)	28-2705.
	530	1329	1 (466)	16-322.		542	1329	1 (1189)	S. 24-407, 411 note.
	530	1329	1 (481)	28-2406.		542	1329	1 (1212)	15-101.
	530	1329	1 (491)	16-611.		542	1329	1 (1214)	15-103.
	531	1329	1 (492)	45-106.		542	1329	1 (1222)	45-905.
	531	1329	1 (493)	45-402.		542	1329	1 (1226)	45-911.
	531	1329	1 (494)	30-216.		542	1329	1 (1265)	12-201.
	531	1329	1 (495)	45-403.		542	1329	1 (1266)	12-202.
	531	1329	1 (496)	45-404.		542	1329	1 (1267)	12-203.
	531	1329	1 (497)	45-302.		542	1329	1 (1268)	12-204.
	531	1329	1 (499)	45-501.		542	1329	1 (1271)	12-306.
	531	1329	1 (501)	45-505.		543	1329	1 (1276)	16-1004.
	531	1329	1 (503)	45-202.		543	1329	1 (1285)	30-103.
	531	1329	1 (505)	45-303.		543	1329	1 (1286)	30-104.
	532	1329	1 (512)	45-101.		543	1329	1 (1290)	30-108.
	532	1329	1 (514)	45-411.		543	1329	1 (1293)	30-112.
	532	1329	1 (515)	45-408.		543	1329	1 (1298)	16-1101.
	532	1329	1 (516)	45-409.		543	1329	1 (1299)	16-1102.
	532	1329	1 (518)	45-410.		543	1329	1 (1302)	16-1202.
	532	1329	1 (519)	45-504.		543	1329	1 (1304)	Obsolete.
	532	1329	1 (520)	45-412.		543	1329	1 (1389)	28-616.
	532	1329	1 (521)	45-601.		543	1329	1 (1406)	28-714.
	532	1329	1 (522)	45-603.		543	1329	1 (1412)	28-720.
	532	1329	1 (523)	45-602.		543	1329	1 (1450)	28-922.
	532	1329	1 (534)	45-611.		543	1329	1 (1453)	28-925.
	532	1329	1 (537)	45-619.		543	1329	1 (1532)	13-208.
	532	1329	1 (538)	45-614.		544	1329	1 (1535)	13-213.
	532	1329	1 (539)	45-615.		544	1329	1 (1537)	13-103.
	533	1329	1 (547)	42-103.		544	1329	1 (1542)	16-1605.
	533	1329	1 (553)	S. 45-703, 709; U. S. C., tit. 5, § 673.		544	1329	1 (1551)	16-1803.
	533	1329	1 (555)	45-503.		544	1329	1 (1552)	16-1804.
	533	1329	1 (ch. 16, sube. 5)	45-301.		544	1329	1 (1554)	16-1806.
	533	1329	1 (568)	1-511.		544	1329	1 (1557)	16-1809.
	533	1329	1 (571)	1-514.		544	1329	1 (1563)	16-1901.
	533	1329	1 (604)	29-606.		544	1329	1 (1574)	1-605.
	533	1329	1 (605)	29-201.		544	1329	1 (1582)	1-621.
	533	1329	1 (618)	29-214.		544	1329	1 (1584)	1-623.
	533	1329	1 (621)	29-217.		544	1329	1 (1585)	1-624.
	534	1329	1 (643)	44-102.		545	1329	1 (1589)	1-628.
	534	1329	1 (645)	35-101.		545	1329	1 (1600)	1-608.
	534	1329	1 (647)	35-103.		545	1329	1 (1606)	7-307.
	534	1329	1 (650)	35-105.		545	1329	1 (1607)	7-308.
	534	1329	1 (657)	35-203.		545	1329	1 (1609)	7-322.
	534	1329	1 (686)	27-128.		545	1329	1 (1628)	19-205.
	534	1329	1 (710)	44-211.		545	1329	1 (1633)	19-203.
	534	1329	1 (713)	26-101.		545	1329	1 (1635a)	19-111.
	534	1329	1 (761)	35-913.		546	1329	1 (1636)	49-303.
	534	1329	1 (793)	29-725.		546	1329	1 (1643)	49-304 note.
	534	1329	1 (826a)	22-3115.		547	1332	1 (3)	47-2003.
	535	1329	1 (827)	22-2202.		547	1332	1 (4)	47-2004.
	535	1329	1 (830)	22-1403.	July 1....	547	1332	1 (9)	22-1111.
	535	1329	1 (842)	22-1301.		561	1351	1	11-615; 47-106.
	535	1329	1 (845a)	22-1302.		591	1352	1	1-237; 22-702.
	535	1329	1 (849)	22-3106.		592	1352	1	47-119, 121.
	535	1329	1 (863)	22-1501.		594	1352	1	R. '28, 45 Stat. 995, ch. 901, § 1. <sup>1</sup>
	535	1329	1 (871)	22-3002.		595	1352	1	R. '28, 45 Stat. 995, ch. 901, § 1. <sup>1</sup>
	535	1329	1 (895)	22-1701.		598	1352	1	7-507.
	536	1329	1 (897)	22-1602.		600	1352	1	S. 8-170. <sup>3</sup>
	536	1329	1 (903)	22-1608.		602	1352	1	43-1105.
	536	1329	1 (918)	23-107.		609	1352	1	11-206, 610 note, 701 note; S. 11-403. <sup>2</sup>
	537	1329	1 (922)	23-111.		610	1352	1	28-2701.
	537	1329	1 (932)	23-101.		615	1352	1	39-608.
	537	1329	1 (934)	23-103.		615	1352	2, 3	Temporary.
	537	1329	1 (958)	18-107.		616	1352	4	47-211.
	537	1329	1 (959)	18-108.		616	1352	5	47-713, 802; S. 7-211. <sup>2</sup>
	537	1329	1 (962)	18-111.		617	1352	6 (1)	47-604, 605, 1201, 1203.
	537	1329	1 (963)	16-416.		618	1352	6 (2)	47-1207.
	537	1329	1 (975)	16-410.		618	1352	6 (3)	47-1212.
	537	1329	1 (977)	16-412.		619	1352	6 (4)	S. 47-501.
	537	1329	1 (984)	16-501.		619	1352	6 (5)	26-318, 321; 47-1701.
	537	1329	1 (989)	16-506.		619	1352	6 (6)	47-1702.
	537	1329	1 (992)	16-508.		619	1352	6 (7)	47-1703.
	537	1329	1 (995)	16-511.		619	1352	6 (8)	R. '39, 52 Stat. 1108, ch. 367, tit. IV, § 2 (c).
	538	1329	1 (1000)	16-516.		620	1352	6 (9)	47-1704.
	538	1329	1 (1003)	16-519.		620	1352	6 (10)	47-1208.
	538	1329	1 (1004)	16-520.		620	1352	6 (11)	47-1213.
	538	1329	1 (1031)	45-816.		621	1352	6 (12)	47-1301.
	538	1329	1 (1034)	45-820.		621	1352	6 (13)	S. 47-1209.
	538	1329	1 (1036)	45-823.		621	1352	6 (14)	47-1706.
	538	1329	1 (1058)	14-201.		622	1352	6 (15)	47-1707.
	540	1329	1 (1060)	14-203.		622	1352	6 (16)	47-1708.
	540	1329	1 (1062)	14-204.		622	1352	6 (17)	47-1709.
	540	1329	1 (1065)	14-303.		622	1352	6 (18)	47-1303.
	540	1329	1 (1067)	14-305.		622	1352	6 (19)	47-1214.
	540	1329	1 (1073a)	14-104.		622	1352	7 (1)	47-2301.
	540	1329	1 (1079)	15-206.		623	1352	7 (2)	S. 47-2302, 2304.
	540	1329	1 (1082)	15-210.		623	1352	7 (3)	S. 47-2305.
	541	1329	1 (1084)	15-212.		623	1352	7 (4)	S. 47-2304.
	541	1329	1 (1085)	15-214.		623	1352	7 (5)	S. 47-2306.
	541	1329	1 (1088)	15-303.		623	1352	7 (6)	S. 47-2343.
	541	1329	1 (1091)	15-306.		623	1352	7 (7)	S. 47-2308.
	541	1329	1 (1101)	15-215.		623	1352	7 (8)	S. 22-1208; S. 47-2309.
	541	1329	1 (1111)	11-1503.		623	1352	7 (9)	S. 47-2327.
	542	1329	1 (1141)	21-115.		624	1352	7 (10)	S. 47-2301 et seq.
	542	1329	1 (1180)	28-2703.		624	1352	7 (11)	S. 47-2331.

<sup>1</sup> Repealed in part.  
<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

## VOLUME 32—Continued

Date	Page	Chapter	Section	D. C. 1940
1902				
July 1....	624	1352	7 (12)	S. 47-2335.
	624	1352	7 (13)	S. 47-2332.
	624	1352	7 (14)	S. 47-2331.
	624	1352	7 (15)	S. 45-1407.
	624	1352	7 (16)	S. 47-2301 et seq.
	625	1352	7 (17)	S. 47-2301 et seq.
	625	1352	7 (18)	S. 47-2328.
	625	1352	7 (19)	S. 47-2327.
	625	1352	7 (20)	S. 47-2320.
	625	1352	7 (21)	S. 47-2326.
	625	1352	7 (22)	S. 47-2301 et seq.
	625	1352	7 (23)	S. 47-2325.
	625	1325	7 (24), (25)	S. 47-2323.
	626	1352	7 (26)	S. 47-2320.
	626	1352	7 (27)	S. 47-2322.
	626	1352	7 (28)	S. 47-2301 et seq.
	626	1352	7 (29)	S. 47-2319.
	626	1352	7 (30), (31)	S. 47-2311.
	626	1352	7 (32)	S. 47-2342.
	626	1352	7 (33), (34)	S. 47-2336.
	627	1352	7 (35)	S. 47-2336, 2337.
	627	1352	7 (36)– (38)	S. 25-110.
	627	1352	7 (39)	S. 1-231 to 233.
	628	1352	7 (40)	S. 47-2314.
	628	1352	7 (41)	S. 47-2317.
	628	1352	7 (42)	S. 47-2101.
	628	1352	7 (43)	S. 47-2339.
	628	1352	7 (44)	S. 26-601 to 611.
	628	1352	7 (45)	S. 47-2321.
	628	1352	7 (46)	S. 47-2301 et seq.
	628	1352	7 (47)	S. 47-2346, 2347.
	628	1352	7 (48)	S. 47-2307.
	629	1352	8	Repealing.
	632	1358	1 (1)	47-1001.
	633	1358	1 (2)	47-1002.
	633	1358	1 (3)	47-1003.
	635	1358	1 (4)	47-1005.
	635	1358	1 (5)	47-1006.
	635	1358	1 (6)	47-1007.
	635	1358	1 (7)	47-1008.
	635	1358	1 (8)	47-1009.
	635	1358	1 (9)	Effective date and Repealing.
	636	1360	1	7-504.
	636	1360	2	Right of Congress to alter, amend, or repeal.
	731	1382	1-6	Temporary.
1903				
Jan. 12....	768	91	1-5	Special.
	769	91	6, 7	47-820.
Jan. 29....	781	333	1-10	Special.
Jan. 30....	784	336	1-3	Special.
Jan. 31....	788	342	-----	Appropriation.
	789	343	-----	Special.
Feb. 11....	824	545	1, 2	Special.
Feb. 12....	825	547	-----	S. 11-202, 210, 302, 331.
Feb. 25....	865	755	1	37-109.
Feb. 27....	907	852	-----	47-822.
	908	854	1-3	Special.
Feb. 23....	909-913	856	1-5	Special.
	914	856	6	47-718.
	915, 916	856	7-9	Special.
	918	856	10	7-1214.
	918	856	11	7-1213.
	918	856	12, 13	Special.
Mar. 2....	923	970	1-3	Special.
Mar. 3....	961	992	1	47-803.
	962	992	1	7-607.
	981	992	2, 3	Temporary.
	981	992	4	Repealing.
	1022	997	1	S. 5-403.
	1022	997	2	S. 5-405.
	1023	997	3	S. 5-406.
	1023	997	4	S. 5-407.
	1043	1006	1	21-306.
	1122	1007	-----	8-128.
	1186	1010	-----	7-123 note.
	1212	1011	20	Special.
	1224	1017	-----	Special.

## VOLUME 33

Date	Page	Chapter	Section	D. C. 1940
1904				
Jan. 15....	6	4	-----	Appropriation.
Jan. 23....	7	7	1-4	Special.
Jan. 25....	8	34	-----	Special.
Feb. 2....	10	89	-----	7-1205; 8-108.

## VOLUME 33—Continued

Date	Page	Chapter	Section	D. C. 1940
1904				
Feb. 5....	10	150	-----	S. 2-308.
Feb. 8....	11	152	1, 2	22-1701.
Feb. 10....	12	155	-----	8-136.
	12	156	1-8	Unconstitutional, 24 App. D. C. 22.
	12	156	9	Repealing.
Feb. 16....	14	158	-----	S. 5-401 to 409.
	14	159	1	7-107.
	14	159	2	7-118.
	14	159	3	Repealing.
Feb. 26....	51	164	-----	7-119.
Mar. 19....	143	719	-----	Special.
Apr. 12....	174	1250	-----	7-123 note.
	174	1251	-----	S. 47-2311.
Apr. 22....	244	1417	1	43-1510.
	244	1417	2	43-1511.
	245	1417	3	43-1512.
	245	1417	4	43-1513.
	246	1417	5	43-1514.
	246	1417	6	Obsolete.
	246	1417	7	43-1515.
	246	1417	8	43-1516.
	246	1417	9	43-1517.
	246	1417	10	Repealing.
	247	1418	1-11	Special.
	250	1423	1-8	Special.
Apr. 23....	252	1424	1-11	Special.
	297	1490	1	30-106.
	297	1490	2	30-112.
	298	1490	3	30-113.
	301	1494	1-4	Special.
Apr. 26....	306	1602	1	1-719.
	307	1602	2	1-720.
	307	1602	3	1-721.
	307	1602	4	1-723.
	308	1602	5	Effective date.
Apr. 27....	308	1604	1, 2	Special.
	316	1618	1	21-326.
	317	1618	2	21-327.
	317	1618	3	21-328.
	317	1618	4	21-329.
	318	1618	5	21-330.
	318	1618	6	21-331.
	318	1618	7	Repealing.
	363	1628	1	1-304.
	364	1628	1	47-806.
	368	1628	1	47-311.
	372	1628	1	7-505.
	373	1628	1	1-236.
	375	1628	1	S. 43-318, 319. <sup>1</sup>
	376	1628	1	8-150; 43-1108.
	379	1628	1	31-1116.
	381	1628	1	47-114.
Apr. 28....	514	1763	1-11	Special.
	516	1765	1-11	Special.
	520	1769	1-11	Special.
	522	1771	1-11	Special.
	534	1779	1-11	Special.
	544	1795	-----	Special.
	554	1808	833a	22-1406.
	555	1809	1	28-1701.
	555	1809	2	28-1702.
	555	1809	3	28-1703.
	556	1809	4	28-1704.
	556	1809	5	28-1705.
	563	1815	6	Repealing.
	563	1815	1	S. 47-1213.
	564	1815	2	47-1212.
	565	1815	2	47-1208, 1302, 1701 to 1704.
	565	1815	2	47-2321 note.
	565	1815	3	Repealing.
	574	1827	1	47-124.
	574	1827	2	47-125.
	575	1828	1-9	Special.
Apr. 12....	577	1829	1-11	Special.
	587	No. 21..	-----	7-116.
1905				
Jan. 19....	609	49	-----	S. 2-121.
Jan. 27....	621	250	-----	S. 6-502, 504.
Jan. 28....	622	285	1-16	Special.
Feb. 1....	628	290	-----	7-122 note.
Feb. 3....	687	297	4	40-502.
Feb. 4....	689	299	-----	29-104; 45-708.
Feb. 7....	704	549	1, 2	S. 7-603.
Feb. 8....	709	557	-----	S. 5-405.
	709	558	-----	Special.
	710	559	-----	Appropriation.
Feb. 9....	710	563	-----	Special.
Feb. 17....	719	581	1, 2	Special.
Feb. 23....	733	733	-----	45-1501.
	733	734	1 (1608)	7-301.
	733	734	1 (1608a)	7-302.
	733	734	1 (1608b)	7-303.
	734	734	1 (1608c)	7-304.

<sup>1</sup> Superseded in part.



STATUTES AT LARGE—Continued

VOLUME 33—Continued					
Date	Page	Chapter	Section	D. C. 1940	
1905					
Feb. 23...	734	734	1(1608d)	7-305.	
	734	734	1(1608e)	7-313.	
	734	734	1(1608f)	7-314.	
	735	734	1(1608g)	7-315.	
	735	734	1(1608h)	7-316.	
	735	734	1(1608i)	7-317.	
	736	734	1(1608j)	7-318.	
	736	734	1(1608k)	7-320.	
	736	734	1(1608l)	7-321.	
	736	734	1(1609)	7-322.	
	736	734	1(1610)	7-323.	
	737	734	1(1611)	7-325.	
	737	734	1(1612)	7-326.	
	737	734	1(1613)	7-327.	
	737	735	1	47-404.	
	737	735	2	47-405.	
	738	735	3	47-406.	
	738	735	4	47-407.	
	738	735	5	47-408.	
	738	735	6	Appropriation.	
	738	735	7	Repealing.	
	739	737	1,2	Special.	
	740	738	1	21-306, 307.	
	740	738	2	S. 21-320, 329.	
	740	739	1,2	Special.	
	741	740	1-3	Special.	
	742	742	1	43-1533.	
	742	742	2	Repealing.	
	742	743	1,2	Special.	
	Mar. 1...	823	1303	-----	Special.
	Mar. 3...	892	1406	1	1-811; S. 7-211. <sup>1</sup>
		893	1406	1	7-505.
896		1406	1	7-701, 704.	
901		1406	1	31-1011.	
902		1406	1	4-106.	
911		1406	1	S. 39-806. <sup>2</sup>	
912		1406	1	43-1519.	
913		1406	2	1-310.	
977		1409	1-12	Special.	
980		1412	1-25	Special.	
984		1414	1,2	8-139.	
984		1414	3	8-140.	
984		1414	4	Appropriation.	
984		1415	1	43-1409.	
985		1415	2	43-1410.	
985		1415	3	43-1411.	
985		1415	4	43-1412.	
986		1415	4a	43-1413.	
986		1415	5	43-1414.	
986		1415	6	43-1415.	
986		1415	7	43-1416.	
986		1415	8	43-1417.	
1001		1434	-----	44-205.	
1001		1435	1-11	Special.	
1006		1441	-----	21-115.	
1007		1442	1-11	Special.	
1010		1444	1-11	Special.	
1012		1445	-----	29-604.	
1014		1448	-----	Special.	
1033		1461	-----	22-3105.	
1036		1467	1-3	Special.	
1038		1469	1-12	Special.	
1190		1483	1	32-319.	
1211		1483	1	32-814.	
1257		1484	4	47-105 note.	

VOLUME 34—Continued					
Date	Page	Chapter	Section	D. C. 1940	
1906					
Mar. 19...	73	960	4	S. 11-922 to 924.	
	73	960	5	S. 11-915.	
	73	960	6	S. 11-922.	
	73	960	7	S. 11-925.	
	73	960	8	3-116, 117, 120; 32-209, 815, 817, 903.	
	74	960	9	S. 11-906.	
	75	960	10	S. 11-933.	
	75	960	11	S. 11-935.	
	75	960	12	S. 11-908, 915.	
	75	960	13	S. 11-907.	
	75	960	14	S. 11-936.	
	76	960	15	S. 11-937.	
	76	960	16	S. 11-938.	
	76	960	17	S. 11-915, 939.	
	76	960	18	S. 11-904.	
	77	960	19	S. 11-905.	
	77	960	20	S. 11-939.	
	77	960	21	S. 11-940.	
	78	960	22	S. 11-934.	
	78	960	23	S. 11-922.	
	78	960	24	S. 11-919.	
	Mar. 23...	78	960	25	Effective date.
78		960	26	S. 11-939.	
86		1131	1	22-903.	
87		1131	2	22-904.	
87		1131	3	22-905.	
Mar. 30...		92	1352	1-3	Special.
		Mar. 31...	93	1355	1,2
94			1356	1	1-807.
94		1356	2	Temporary.	
94		1356	3	Repealing.	
94	1357	-----	R. '21, 41 Stat. 1225, ch. 118, § 33.		
Apr. 14...	94	1358	-----	R. '21, 41 Stat. 1225, ch. 118, § 33.	
	112	1622	-----	8-108.	
	113	1623	-----	31-301.	
	113	1624	-----	24-301.	
	114	1626	1	5-313.	
	115	1626	2	5-314.	
	115	1626	3	5-315.	
	115	1626	4	Repealing.	
	Apr. 20...	123	1641	1	27-129.
		123	1641	2	27-130.
124		1641	3	27-131.	
Apr. 21...	124	1641	4	Appropriation.	
	126	1646	-----	11-705.	
	126	1647	-----	22-3112.	
Apr. 30...	127	1647	-----	22-1112, 1211.	
	151	2070	1 (491a)	7-202.	
	151	2070	1 (491b)	7-203.	
	151	2070	1 (491c)	7-204.	
	152	2070	1 (491d)	7-205.	
	152	2070	1 (491e)	7-206.	
	152	2070	1 (491f)	7-207.	
	152	2070	1 (491g)	7-208.	
	153	2070	1 (491h)	7-209.	
	153	2070	1 (491i)	7-210.	
May 1...	153	2070	1 (491j)	7-211.	
	153	2070	1 (491k)	7-212.	
	153	2070	1 (491l)	7-213.	
	153	2070	1 (491m)	7-214.	
	154	2070	1 (491n)	7-215.	
	157	2073	1	5-601.	
	157	2073	2	5-602.	
	157	2073	3	5-603.	
	158	2073	4	5-604.	
	158	2073	5	5-605.	
May 7...	158	2073	6	5-606.	
	158	2073	7	5-607.	
	158	2073	8	5-608.	
	159	2073	9	5-609.	
	159	2073	10	5-610.	
	159	2073	11	5-611.	
	159	2073	12	5-612.	
	160	2073	13	5-613.	
	160	2073	14	5-614.	
	161	2073	15	5-615.	
	161	2073	16	Repealing.	
	161	2074	-----	Special.	
	162, 163	2075	2,6	47-819.	
	175	2084	1	2-601.	
	176	2084	2	2-602 note.	
	176	2084	3	2-602.	
	176	2084	4	2-603.	
	177	2084	5	2-604.	
	177	2084	6	2-605.	
	177	2084	7	2-606.	
	177	2084	8	2-607.	
	178	2084	9	2-608.	
	179	2084	10	2-609.	
	179	2084	11	2-610.	
	180	2084	12	2-611.	
	180	2084	13	2-612.	
	181	2084	14	2-613.	
	181	2084	15	2-614.	

VOLUME 34				
Date	Page	Chapter	Section	D. C. 1940
1906				
Feb. 9...	13	156	-----	S. 47-2336.
Feb. 19...	15	257	1-11	Special.
Feb. 27...	48	510	3	47-105, note.
Mar. 3...	50	513	-----	Special.
Mar. 15...	62	949	-----	22-1307.
Mar. 19...	70	957	1	5-301.
	70	957	2	5-302.
	70	957	3	5-303.
	71	957	4	5-304.
	71	957	5	5-305.
	71	957	6	5-306.
	71	957	7	5-307.
	71	957	8	S. 47-2302.
	71	957	9	5-308.
	71	957	10	5-309.
	71	957	11	5-310.
	72	957	12	5-311.
	72	958	-----	10-135.
	72	959	-----	S. 10-128.
	73	960	1	11-101, 901.
	73	960	2	S. 11-920.
	73	960	3	S. 11-921.

<sup>1</sup>Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 34—Continued					VOLUME 34—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1906					1906				
May 7....	181	2084	16	2-615.	June 30....	809	3932	5	22-1624.
	182	2084	17	2-616.		809	3932	6	R. '32, 47 Stat. 661, ch. 478, § 2;
	182	2084	18	R. '07, 34 Stat. 1006, ch. 2085, § 4.		820	3947		Repealing.
	182	2084	19	2-617.					Special.
	182	2084	20	Repealing.	1907				
June 6....	214	2582		Special.	Jan. 9....	843	28		Special.
June 8....	219	3054	1-9	R. '25, 43 Stat. 803, ch. 140, § 4.		844	29	1-3	Special.
	220	3055	1, 2	22-1119.		844	30	1-3	Special.
	220	3055	3	Effective date.		845	31	1-3	Special.
	221	3056	1 (1)	4-102.		846	32	1-3	Special.
	221	3056	1 (2)	4-103.		846	33	1-3	Special.
	221	3056	1 (3)	4-106.		847	34	1-3	Special.
	221	3056	1 (4)	4-121.		847	35	1, 2	Special.
	222	3056	1 (5)	4-122.	Jan. 12....	848	37		S. 47-2101 et seq.
	222	3056	1 (6)	Executed.	Jan. 21....	853	303	1-3	Special.
	222	3056	1 (7)	4-124.	Jan. 22....	854	384		R. '21, 41 Stat. 1225, ch. 118, § 33.
	223	3056	1 (8)	S. 4-108.		854	385	1-3	Special.
	223	3056	1 (9)	4-125.		855	386	1-3	Special.
	223	3056	1 (10)	Saving clause.		855	387	1-3	Special.
	223	3056	1 (11)	Effective date.		856	388	1-3	Special.
June 11..	232	3073	1	44-401.		856	389	1-3	Special.
	232	3073	2	44-402.		857	390	1-3	Special.
	232	3073	3	44-403.	Jan. 31....	868	437	1, 2	Special.
	232	3073	4	44-404.	Feb. 1....	868	440		Special.
	233	3073	5	44-405.		870	441		S. 25-107.
	236	3076	1-12	Special.		870	442	1	2-801.
June 19..	304	3438	1-3	S. 47-2101.		870	442	2	2-802.
	305	3438	4	S. 47-2102.		871	442	3	2-803.
	306	3438	5	S. 47-2101 et seq.		871	442	4	2-804.
	306	3438	6	S. 47-2105.		872	442	5	2-805.
	306	3438	7	S. 47-2103.		872	442	6	2-806.
	307	3438	8	S. 47-2104.		872	442	7	2-807.
	308	3438	9	47-2110.		872	442	8	2-808.
	308	3438	10	47-2111.		873	442	9	2-809.
	308	3438	11	S. 47-2101 et seq.		873	442	10	2-810.
	309	3438	12	Repealing.		873	442	11	2-811.
	309	3438	13	Effective date.		873	442	12	2-812.
June 20..	314	3443	1	4-401.		874	445	1, 2	Special.
	314	3443	2	4-402.		874	445		13-103.
	314	3443	3	4-404.	Feb. 8....	882	894	1-3	Special.
	315	3443	4	S. 4-405.	Feb. 9....	885	911		Special.
	315	3443	5	4-407.		887	913	1	2-401.
	315	3443	6	Repealing.		887	913	2	2-402.
	315	3443	7	Effective date.		888	913	3	2-403.
	315	3444		R. '21, 41 Stat. 1225, ch. 118, § 33.		888	913	4	2-405.
	316	3446	1	31-1101.		888	913	5	Obsolete.
	316	3446	2	31-101 to 104, 119, 606, 629, 1109 to 1113.		889	913	6	2-407.
	317	3446	3	31-105, 108, 109 note, 110, 111.		889	913	7	2-408.
	318	3446	4	31-610.		889	913	8	2-409.
	319	3446	5	31-112, 113.		889	913	9	2-405.
	319	3446	6	31-114, 601 to 604, 617 to 619, 626 to 628.		889	913	10	2-410.
	320	3446	7	31-115.		889	913	11	2-411.
	320	3446	8	31-605, 610.	Feb. 18....	894	935	1-25	R. '39, 53 Stat. 1408, ch. 691, § 3.
	321	3446	9	31-610.	Feb. 25....	929	1193		Special.
	321	3446	10	31-116.		930	1195		R. '21, 41 Stat. 1225, ch. 118, § 33.
	321	3446	11	Temporary.	Feb. 26....	994	1636		7-208; 16-617 note.
	321	3446	12	31-117.		994	1637	1-3	45-707.
	321	3446	13	Effective date.	Feb. 27....	1000	2075		Special.
June 21..	384	3505	1	5-201.		1001	2076	1-3	Special.
	384	3505	2	5-202.		1004	2083	1-3	Special.
	384	3505	3	5-203.		1004	2084	1-3	Special.
	385	3505	4	5-205.		1005	2085	1	2-603, 604, 607 to 609.
	385	3505	5	5-206.		1005	2085	2	2-607.
	385	3505	6	Repealing.		1005	2085	3	2-605.
	385	3506		5-204.		1006	2085	3	2-602.
	385	3507		Special.		1006	2085	4, 5	Repealing.
June 25..	458	3533		26-101.		1006	2086	1 (878a)	48-301.
June 27..	483	3553	1	2-1401.		1006	2086	1 (878b)	48-302.
	485	3553	1	10-136, 137 note.		1007	2086	1 (878c)	48-303.
	489	3553	1	45-706.		1007	2086	1 (878d)	48-304.
	491	3553	1	7-333; R. '07, 34 Stat. 1128, ch. 2510, § 1.		1007	2086	1 (878e)	48-305.
	492	3553	1	47-207.		1007	2086	1 (878f)	48-306.
	494	3553	1	47-206.		1007	2086	1 (878g)	48-307.
	503	3553	1	31-1011.	Feb. 28....	1008	2115	1-9	Special.
	515	3553	2-8	Temporary.	Mar. 1....	1010	2280	1	6-301.
	521	3560	1-4	Special.		1010	2280	2	6-302.
June 28..	546	3575	1	1-805.		1011	2280	3	6-303.
	546	3575	2	Repealing.		1011	2280	4	6-304.
	552	3585		45-405.		1011	2281	5	Effective date and repealing.
June 29..	614	3602	1, 2	Special.		1012	2283	1-3	Special.
	619	3611		Special.		1127	2510	1	7-609, 613.
	621	3615	1-3	R. '25, 43 Stat. 1125, ch. 443, § 16.	Mar. 2....	1128	2510	1	7-333.
	622	3616		1-501.		1130	2510	1	7-122 note, 510.
	624	3618	1-9	Special.		1133	2510	1	43-1206.
	630	3623		Special.		1134	2510	1	43-1109.
June 30..	763	3914	7	47-204.		1141	2510	1	31-1103.
	768	3915		33-103.		1145	2510	1	33-320.
	800	3924		7-122 note.		1155	2510	2-8	Temporary.
	805	3929	4, 11	47-829.		1222	2524	1-3	Special.
	808	3932	1	22-1621.		1225	2531	1-3	Special.
	808	3932	2	22-1622.		1244	2560	1-4	Special.
	809	3932	3	22-1623.		1247	2566	1	5-301 to 303, 305.
	809	3932	4	1-227.		1248	2566	1	S. 5-310.

¹ Repealed in part.



## STATUTES AT LARGE—Continued

## VOLUME 34—Continued

Date	Page	Chapter	Section	D. C. 1940
1907				
Mar. 2...	1248	2569	1-3	S. 25-101 et seq.
	1252	2574	-----	S. 4-103.
Mar. 4...	1371	2918	9	9-203.
	1412	2931	-----	S. 2-106.

## VOLUME 35

Date	Page	Chapter	Section	D. C. 1940
1908				
Feb. 15...	12	27	1	S. 40-102, 103 <sup>2</sup>
Mar. 9...	39	71	-----	Special.
Mar. 27...	51	110	-----	Special.
Apr. 2...	55	122	1, 2	S. 10-118.
Apr. 20...	64	148	1	32-301.
	64	148	2	32-302.
	65	148	3	32-303.
	65	148	4	32-304.
	65	148	5	32-305.
	65	148	6	Repealing.
Apr. 22...	65	149	-----	44-401 note.
May 13...	126	165	1-10	R. '39, 53 Stat. 1408, ch. 691, §3.
May 16...	163	172	1, 2	Temporary.
	164	172	3	22-1508.
May 23...	246	190	1-3	Special.
	247	190	4	44-206.
	247	190	5-14	Special.
	250	190	15	44-207.
	250	190	16	44-202.
	250	190	17	44-203.
	250	190	18	Right of Congress to alter, amend, or repeal.
May 26...	274	198	1	1-305.
	286	198	1	8-133.
287, 288	198	1	7-708.	
	291	198	1	31-609, 630.
	296	198	1	4-103.
	298	198	1	4-411.
	299	198	1	6-110.
	308	198	1	39-517.
	310	198	2-8	Appropriation.
	312	198	9	Repealing.
May 27...	355	200	1	8-129, 157.
	380	200	1	3-116; 32-801, 802, 805, 903.
May 28...	420	209	1-17	R. '28, 45 Stat. 1006, ch. 908, §27.
May 29...	472	221	1, 2	Special.
	473	222	1-8	Special.
May 30...	493	227	1	1-809.
	494	227	1	7-331.
	544	228	29	Appropriation.
	554	232	-----	Special.
Dec. 18...	581	2	1-3	S. 7-123 note.
	582	3	-----	Special.
	582	4	-----	7-215.
1909				
Jan. 29...	590	52	-----	Special.
Feb. 3...	593	61	1-4	Special.
Feb. 6...	597	75	1, 2	Temporary.
Feb. 9...	617	102	-----	Special.
Feb. 16...	620	129	1, 2	Special.
Feb. 17...	623	134	-----	11-101, 701; 45-909 to 912, 914.
	624	134	-----	11-610, 706 to 708, 710.
	625	134	-----	11-709, 711 to 714; 44-102.
Feb. 18...	629	146	(10)	39-106.
	629	146	(11)	S. 39-107.
	630	146	(12)	39-111.
	630	146	(13)	39-206.
	630	146	(14)	39-207.
	630	146	(15)	39-208.
	630	146	(16)	39-209.
	630	146	(17)	39-210.
	630	146	(18)	39-211.
	631	146	(19)	39-212.
	631	146	(20)	39-213.
	631	146	(21)	39-214.
	631	146	(22)	39-301.
	632	146	(23)	S. 39-401.
	632	146	(24)	S. 39-402.
	632	146	(25)	S. 39-403.
	632	146	(26)	39-404.
	632	146	(27)	39-405.
	632	146	(28)	S. 39-403.
	632	146	(29)	39-501.
	632	146	(30)	39-502.
	632	146	(31)	39-503.
	633	146	(32)	39-504.
	633	146	(33)	39-505.
	633	146	(34)	39-506.
	633	146	(35)	39-507.
	633	146	(36)	39-508.
	633	146	(37)	39-509.

## VOLUME 35—Continued

Date	Page	Chapter	Section	D. C. 1940
1909				
Feb. 18...	633	146	(38)	39-510, 511.
	633	146	(39)	S., U. S. C., title 32, § 47.
	634	146	(40)	39-512.
	634	146	(41)	39-513.
	634	146	(42)	39-514.
	634	146	(43)	39-601.
	634	146	(44)	39-602.
	634	146	(45)	39-515.
	634	146	(46)	39-607.
	634	146	(47)	39-516.
	634	146	(48)	39-603.
	634	146	(49)	39-604.
	634	146	(50)	39-605.
	634	146	(51)	39-606.
	634	146	(52)	39-608.
	634	146	(53)	39-801.
	634	146	(54)	39-701.
	634	146	(55)	39-702.
	634	146	(56)	39-703.
	634	146	(57)	29-704.
	634	146	(58)	39-705.
	635	146	(59)	39-706.
	635	146	(60)	39-707.
	635	146	(61)	39-708.
	635	146	(62)	39-709.
	635	146	(63)	39-802.
	635	146	(64)	39-803.
	635	146	(65)	39-804.
	636	146	(66)	39-805.
	636	146	(67)	39-903.
	636	146	(68)	39-901.
	636	146	(69)	39-904.
	636	146	(70)	39-905.
	636	146	(71)	Repealing.
	636	146	(72)	39-108.
	636	146	(73)	11-1420.
	636	146	(74)	S. '16, 39 Stat. 166, ch. 134.
	636	146	(75)	39-906.
	636	146	(76)	39-902.
Feb. 20...	641	166	1	S. 47-2104.
Feb. 25...	649	195	1, 2	Temporary.
	650	196	-----	7-122 note.
	651	198	1, 2	Temporary.
	651	199	1, 2	Temporary.
	652	201	-----	7-122 note.
	653	203	1, 2	Temporary.
Feb. 26...	655	213	1, 2	Temporary.
	656	214	1, 2	Temporary.
	657	217	1	32-820.
	657	217	2	32-821.
	657	217	3	Repealing.
Feb. 27...	657	223	-----	S. 4-506.
Mar. 1...	670	233	1 (869a)	22-1509.
	671	233	1 (869b)	22-1510.
	671	233	1 (869c)	22-1511.
	671	233	1 (869d)	22-1512.
Mar. 3...	689	250	1	4-111; 5-429.
	692	250	1	1-306.
	693	250	1	40-102 note.
	703	250	1	43-310; S. 7-704. <sup>1</sup>
	704	250	1	S. 31-628. <sup>1</sup>
	711	250	1	22-3301.
	724	250	1	1-223.
	726	250	2-6	Temporary.
	728	250	7	47-212; S. 47-503. <sup>1</sup>
	728	250	8	Repealing.
	779	257	-----	Special.
	838	268	-----	Special.
Mar. 4...	858	297	-----	37-109 note.
	894	299	1	8-144.
	1058	303	1	26-404.
	1059	303	2	26-405.
	1060	306	1-3	Temporary.
	1063	310	-----	S. 11-902 to 942.
	1066	315	-----	7-509.
	1084	320	34	11-307.
	1149	321	1 (318)	22-1001.
Feb. 25...	1150	321	1 (320)	22-1105.
Feb. 26...	1150	321	1 (321)	22-1106.

## VOLUME 36

Date	Page	Chapter	Section	D. C. 1940
1910				
Feb. 19...	197	41	-----	7-122 note.
Feb. 21...	199	50	-----	Temporary.
	199	51	1, 2	Temporary.
	200	52	1, 2	Temporary.
	200	53	1, 2	Temporary.
	201	54	-----	7-122 note.
Feb. 25...	208	62	-----	49-110.
Feb. 26...	229	66	-----	Special.

<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 36—Continued					VOLUME 36—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1910					1910				
Mar. 2.---	231	72	1, 2	Temporary.	May 18.---	393	248	1 provi-	Temporary.
	232	73	-----	Temporary.		393	248	so 3	S. 31-611 to 615.
Mar. 23.---	232	74	1, 2	Temporary.				1 provi-	
	239	102	1, 2	Special.		403	248	sos 4, 5	22-906.
	239	103	-----	Special.		404	248	1	11-626.
	240	105	-----	Special.		409	248	1	3-119; 32-1006.
	240	106	1, 2	Temporary.		412	248	1	R. '12, 37 Stat. 177, ch. 182, § 1. <sup>1</sup>
	240	107	-----	7-123 note.		413	248	2-6	Temporary.
	241	108	-----	7-122 note.		415	248	7	Repealing.
	242	110	1, 2	Temporary.	June 1.---	452	263	1	5-401.
	242	111	1, 2	Temporary.		452	263	2	5-402.
Mar. 30.---	243	114	-----	Temporary.		452	263	3	5-403.
	268	136	1	7-216.		453	263	4	5-404.
	268	136	2	7-217.		453	263	5	5-405.
Apr. 4.---	290	141	-----	37-108.		454	263	6	5-406.
Apr. 8.---	292	145	-----	7-123 note.		454	263	7	5-407.
Apr. 15.---	300	164	1	32-910.		454	263	8	5-408.
	300	164	2	32-911.		455	263	9	5-409.
	300	164	3	Repealing.	June 9.---	464	277	-----	11-1507.
	301	167	1	28-1801.	June 10.---	464	282	-----	24-406.
	301	167	2	28-1802.	June 22.---	581	314	1-3	Special.
	301	167	3	28-1803.		584	319	1, 2	Temporary.
	301	167	4	28-1804.	June 25.---	700, 701	383	36	8-112.
	301	167	5	28-1805.		786	385	-----	S. 24-419 note.
	302	167	6	28-1806.		833	404	1	22-2705.
	302	167	7	28-1807.		833	404	2	22-2706.
	302	167	8	28-1901.		833	404	3	22-2707.
	302	167	9	28-1902.		833	404	4	22-2708.
	302	167	10	28-1903.		833	404	5	22-2709.
	303	167	11	28-1904.		864	433	1	24-101.
	303	167	12	28-1905.		864	433	2	24-102.
	303	167	13	28-1906.		864	433	3	24-103.
	303	167	14	28-1907.		865	433	4	24-104.
	304	167	15	28-1908.		865	433	5	24-105.
	304	167	16	28-1909.		866	435	-----	11-1508.
	304	167	17	28-1910.	Feb. 19.---	874	No. 10	-----	S. 10-101.
	304	167	18	28-1911.	Dec. 20.---	887	4	-----	Special.
	304	167	19	28-1912.		887	5	1-3	Temporary.
	304	167	20	28-1913.	Dec. 21.---	888	6	1, 2	Temporary.
	304	167	21	28-1914.	Dec. 30.---	891	8	-----	5-405.
	304	167	22	28-1915.	1911				
	304	167	23	28-1916.	Feb. 2.---	894	31	-----	Special.
	305	167	24	28-1917.	Feb. 18.---	920	116	-----	Special.
	305	167	25	28-1919.	Feb. 20.---	924	134	-----	7-122 note.
	305	167	26	28-1920.		925	135	1, 2	Temporary.
	305	167	27	28-1921.	Mar. 1.---	963	187	-----	22-3415.
	305	167	28	28-1922.	Mar. 2.---	966	192	1	1-304.
	305	167	29	28-1923.		967	192	1	1-312; 5-430.
	305	167	30	28-1924.		969	192	1	47-122.
	306	167	31	28-1925.		974	192	1	11-1204.
	306	167	32	28-1926.		975	192	1	1-808; 47-129.
	306	167	33	28-1927.		978	192	1	7-122 note.
	307	167	34	28-1928.		981	192	1	1-722.
	307	167	35	28-1929.		990	192	1	S. 36-225. <sup>2</sup>
	307	167	36	28-1930.		993	192	1	6-116.
	307	167	37	28-2001.		1002	192	1	24-403.
	307	167	38	28-2002.		1003	192	1	24-405, 407, 408, 410, 414 to 416,
	307	167	39	28-2003.					420, 421; 47-201.
	308	167	40	28-2004.		1004	192	1	39-806; S. 24-418. <sup>1</sup>
	308	167	41	28-2005.		1006	192	1	8-113.
	308	167	42	28-2006.		1007	192	2-6	Appropriation.
	308	167	43	28-2007.		1008	192	7	7-701.
	308	167	44	28-2008.		1011	192	8	7-702 to 705.
	308	167	45	28-2069.		1011	192	9	Temporary.
	309	167	46	28-2010.		1011	192	10	Repealing.
	309	167	47	28-2011.	Mar. 3.---	1078	212	1, 2	Temporary.
	309	167	48	28-2012.		1159	231	1 (250)	R. '25, 43 Stat. 941, ch. 229, § 13.
	309	167	49	28-2013.		1167	231	1 (239)	11-305.
	309	167	50	28-2101.		1167	231	1 (239, 291)	45-403.
	309	167	51	28-2102.	Mar. 4.---	1299	240	-----	49-110.
	309	167	52	28-2103.		1344	243	1-3	Temporary.
	310	167	53	28-2104.		1346	248	1-3	Temporary.
	310	167	54	28-2105.		1347	249	1, 2	Temporary.
	310	167	55	28-2106.		1347	250	-----	7-107 note.
	310	167	56	28-2201.		1395	285	1	31-607.
	310	167	57	28-2202.		1422	285	1	31-1001 to 1006, 1008 to 1020,
	310	167	58	28-2203.					1022.
	311	167	59	28-2204.					S. 11-1001 note. <sup>1</sup>
	311	167	60	Repealing.					
	311	167	61	Effective date.					
	311	167	62	28-2205.					
Apr. 20.---	325	178	1, 2	Temporary.					
	325	179	-----	Temporary.					
Apr. 29.---	336	196	1-3	Temporary.					
May 10.---	353	225	1, 2	Temporary.					
May 17.---	371	244	1-5	Special.					
May 18.---	373	247	1, 2	Temporary.					
	373	247	3	Repealing.					
	379	248	1	35-107; 40-102 note.					
	381	248	1	1-239; 40-503.					
	382	248	1	1-609.					
	383	248	1	8-126.					
	388	248	1	7-519.					
	389	248	1	6-502.					
	393	248	1 provi-	S. 31-628.					
			sos 1, 2						
					VOLUME 37				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1911					1911				
June 30.---	1	1	1, 2	Temporary.	June 30.---	1	1	1, 2	Temporary.
Aug. 15.---	16	12	-----	35-202.	Aug. 15.---	16	12	-----	35-202.
Aug. 18.---	22	26	-----	35-103.	Aug. 18.---	22	26	-----	35-103.
Aug. 19.---	29	34	-----	7-107 note.	Aug. 19.---	29	34	-----	7-107 note.
Dec. 21.---	45	2	-----	22-108.	Dec. 21.---	45	2	-----	22-108.

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 37—Continued					VOLUME 37—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
<b>1912</b>					<b>1913</b>				
Jan. 17....	53	11	-----	35-102.	Mar. 4....	977	150	8 (1)	43-122, 123.
Feb. 10....	63	35	-----	S. 4-113.		977	150	8 (2)	43-301.
Feb. 15....	65	39	-----	7-107 note.		977	150	8 (3)	43-302.
Mar. 1....	71	48	1, 2	Temporary.		977	150	8 (4)	43-303.
May 20....	114	124	1	5-401.		978	150	8 (5)	43-304.
	114	124	7	5-407.		978	150	8 (6)	43-305.
June 18....	134	171	1-7	S. 11-907.		978	150	8 (7)	43-306.
	136	171	8	22-903.		978	150	8 (8)	43-307.
June 26....	139	182	1	16-619 note.		978	150	8 (9)	43-308.
	140	182	1	1-304.		978	150	8 (10)	43-309.
	144	182	1	1-306.		979	150	8 (11)	43-310.
	147	182	1	1-819; 11-1204.		979	150	8 (12)	43-311.
	150	182	1	7-617.		979	150	8 (13)	43-312.
	152	182	1	7-614.		979	150	8 (14)	43-313.
	153	182	1	47-133.		979	150	8 (15)	43-314.
	156	182	1	31-114; S. 31-611 to 615. <sup>1</sup>		979	150	8 (16)	43-315.
	157	182	1	31-113.		980	150	8 (17)	43-316.
	161	182	1	31-301.		980	150	8 (18)	43-317.
	162	182	1	R. '17, 39 Stat. 1027, ch. 160, § 1. <sup>1</sup>		980	150	8 (19)	43-318.
	168	182	1	1-805, 806.		980	150	8 (20)	43-319.
	170	182	1	S. 24-417. <sup>2</sup>		980	150	8 (21)	43-320.
	171	182	1	32-901, 907.		980	150	8 (22)	43-321.
	172	182	1	32-318.		981	150	8 (23)	43-322.
	176	182	1	S. 24-418. <sup>2</sup>		981	150	8 (24)	43-323.
	178	182	1	7-218.		981	150	8 (25)	43-324.
	179	182	1	8-125.		981	150	8 (26)	43-325.
	180	182	2-6	Temporary.		981	150	8 (27)	43-326.
	181	182	7	7-701.		981	150	8 (28)	43-327.
	184	182	8	47-111.		981	150	8 (29)	43-328.
	184	182	9	47-105.		982	150	8 (30)	43-329.
	184	182	10	47-126.		982	150	8 (31)	43-330.
	184	182	11	Temporary.		982	150	8 (32)	43-402.
July 16....	192	235	1	11-604; 22-1101, 2722.		982	150	8 (33)	43-403.
	193	235	2	11-605; 22-507.		982	150	8 (34)	43-404.
July 17....	194	238	1, 2	Temporary.		982	150	8 (35)	43-405.
Aug. 14....	309	288	1	2-201, 207; 21-330.		982	150	8 (36)	43-406.
Aug. 20....	318	308	10	6-905.		983	150	8 (37)	43-407.
Aug. 22....	326	333	1, 2	Temporary.		983	150	8 (38)	43-408.
Aug. 23....	412	350	-----	11-204, 1509.		983	150	8 (39)	43-409.
Aug. 24....	417	355	1	27-121 note.		983	150	8 (40)	43-410.
	437	355	1	8-134.		983	150	8 (41)	43-411.
	444	355	1	8-133.		984	150	8 (42)	S. 43-412.
	488	355	10	Temporary.		984	150	8 (43)	43-413.
	490	357	1-10	Special.		984	150	8 (44)	43-414.
	503	375	-----	7-123 note.		984	150	8 (45)	43-415.
	512	387	1	22-3415.		984	150	8 (46)	43-416.
<b>1913</b>						984	150	8 (47)	43-417.
Jan. 29....	653	20	-----	S. 47-2331.		984	150	8 (48)	43-418.
Feb. 3....	656	23	-----	22-2204.		985	150	8 (49)	43-419.
	656	24	-----	Special.		985	150	8 (50)	43-420.
	656	25	-----	22-1702.		985	150	8 (51)	43-421.
Feb. 4....	657	26	1	26-601.		985	150	8 (52)	R. '35, 49 Stat. 882, ch. 742, § 1.
	657	26	2	26-602.		985	150	8 (53)	43-422.
	658	26	3	26-603.		986	150	8 (54)	43-501.
	658	26	4	26-604.		986	150	8 (55)	43-601.
	659	26	5	26-605.		987	150	8 (56)	43-602.
	659	26	6	26-606.		987	150	8 (57)	43-603.
	659	26	7	26-607.		987	150	8 (58)	43-604.
	660	26	8	26-608.		987	150	8 (59)	43-605.
	660	26	9	26-609.		988	150	8 (60)	43-606.
	660	26	10	26-610.		988	150	8 (61)	43-701.
	660	26	11	26-611.		988	150	8 (62)	43-702.
	660	26	12	Repealing.		988	150	8 (63)	43-703.
	660	26	13	Effective date.		988	150	8 (64)	43-704.
Feb. 25....	679	69	1-6	Special.		989	150	8 (65)	43-705.
Mar. 2....	724	96	1, 2	Temporary.		989	150	8 (66)	43-706.
Mar. 3....	727	107	1	22-1202, 1206, 1207.		989	150	8 (67)	43-707.
	727	107	2	Effective date.		989	150	8 (68)	43-708.
	727	108	1	22-2203.		989	150	8 (69)	43-709.
	727	108	2	Effective date.		989	150	8 (70)	43-712.
	729	111	1, 2	Temporary.		990	150	8 (71)	43-713.
	729	111	3	7-123 note.		990	150	8 (72)	43-801.
Mar. 4....	885	147	22	8-158.		990	150	8 (73)	43-802.
	917	149	-----	32-404.		990	150	8 (74)	43-803.
	938	150	1	7-107 note.		990	150	8 (75)	43-804.
	940	150	1	10-136, 137 note.		990	150	8 (76)	43-805.
	941	150	1	10-135.		990	150	8 (77)	43-806.
	943	150	1	37-107.		990	150	8 (78)	43-807.
	945	150	1	1-813.		991	150	8 (79)	43-808.
	948	150	1	7-618.		991	150	8 (80)	43-901.
	949	150	1	7-122.		991	150	8 (81)	43-902.
	950	150	1	7-201.		991	150	8 (82)	43-903.
	953	150	1	7-709.		991	150	8 (83)	43-904.
	956	150	1	31-625.		992	150	8 (84)	43-905.
	960	150	1	4-409.		992	150	8 (85)	43-906.
	961	150	1	6-109.		992	150	8 (86)	43-909.
	962	150	1	8-137.		992	150	8 (87)	43-910.
	964	150	1	11-211.		992	150	8 (88)	43-911.
	971	150	1	8-111.		993	150	8 (89)	43-1001.
	972	150	2-6	Temporary.		993	150	8 (90)	43-1002.
	974	150	7	7-1001.		993	150	8 (91)	43-204.
	974	150	8 (1)	43-101 to 109, 1201.		994	150	8 (92)	43-1003.
	975	150	8 (1)	43-110 to 114.		994	150	8 (93)	43-913.
	976	150	8 (1)	43-115 to 121.		994	150	8 (94)	43-401.
						994	150	8 (95)	43-206.
						995	150	8 (96)	43-207, 208; 44-203.

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 37—Continued					VOLUME 39—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1913					1916				
Mar. 4....	995	150	8 (97)	43-202.	May 18....	164	127	6, 7	Temporary.
	996	150	8 (98)	43-912.	May 29....	165	130	1	22-1411.
	996	150	8 (99)	43-209.		165	130	2	22-1412.
	996	150	8 (100)	43-1004.		165	130	3	22-1413.
	996	150	8 (101)	43-1005.	June 3....	165	130	4	Repealing.
	996	150	8 (102)	43-1006.		197	134	58	39-107 note.
	996	150	8 (103)	43-1007.		197	134	60	39-107.
	997	150	9	S. 25-101 et seq.		199	134	66	39-202.
	1006	150	10	47-1208.		200	134	68	39-111.
	1006	150	11	43-502.		200	134	69	39-401.
						201	134	70	39-402.
						201	134	72	39-403.
						204	134	87	39-501 note.
						206	134	92, 94	39-607 note.
						208	134	102, 103	39-701 note.
					June 28..	241	183	-----	Repealing.
					July 1....	282	209	1	8-160.
						309	209	1	21-319, 328, 329; 32-401, 402,
									404, 405, 407.
						310	209	1	31-1021.
						311	209	1	32-320.
					July 28....	424	261	2	17-101 note.
					Aug. 15....	514	342	-----	47-801, 824.
					Aug. 21....	519	362	-----	Special.
						521	367	-----	43-111.
					Aug. 26....	536	412	-----	43-111.
					Sept. 1....	678	433	1	11-1516; 47-702.
						679	433	1	1-307.
						683	433	1	44-213.
						688	433	1	7-603.
						695	433	1	31-608.
						711	433	1	24-402.
						714	433	2-5	Temporary.
						716	433	6	43-1207.
						716	433	7	7-901.
						716	433	8	7-612.
						717	433	9	1-817.
						717	433	10	Appropriation.
						717	433	11	47-1207 note.
						718	433	12	4-129, 159, 160, 501, 503, 506, 507;
									11-625.
						719	433	12	4-509, 510.
						720	433	12	4-113, 512 to 514.
						721	433	12	4-114, 508.
						721	433	13	Repealing.
					Sept. 8....	846	473	1	47-2201.
						846	473	2	47-2202.
						847	473	3	47-2203.
						847	473	4	47-2204.
						847	473	5	47-2205.
						847	473	6	47-2206.
						847	473	7	47-2207.
						847	473	8	47-2208.
					Dec. 20....	857	2	1, 2	Repealing.
									Appropriation.
					1917				
					Feb. 6....	899	32	-----	Temporary.
					Feb. 8....	900	34	-----	22-3414.
					Feb. 26....	942	126	1-6	Temporary.
						944	127	-----	Temporary.
					Mar. 2....	968	145	54	45-406.
					Mar. 3....	1005	160	1	47-306, 604, 1010.
						1006	160	1	26-601, 602; 47-2301 note.
						1009	160	1	47-825.
						1010	160	1	40-501.
						1012	160	1	R. '24, 43 Stat. 109, ch. 131, § 17;
									'25, 43 Stat. 1126, ch. 443, § 16. <sup>1</sup>
						1014	160	1	7-122 note.
						1017	160	1	7-319.
						1018	160	1	7-512.
						1019	160	1	8-132.
						1021.	160	1	S. 31-610, 617. <sup>2</sup>
						1022			
						1026	160	1	31-804; S. 31-305. <sup>4</sup>
						1043	160	1	43-1530.
						1046	160	2-5	Temporary.
						1046	160	6	S. 47-211.
						1046	160	7	Special.
						1046	160	8	S. 47-2339.
						1046	160	9	47-1207 note.
						1047	160	10	Temporary.
						1123	165	1-24	R. '33, 48 Stat. 28, ch. 19, § 12.
VOLUME 38					VOLUME 40				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1913					1917				
June 23..	75	3	7	Temporary.	Apr. 17....	10		-----	8-124.
1914					Apr. 30....	38	10	-----	Special.
Feb. 7....	280	16	1	22-2713.	May 12....	72	12	-----	39-109, 110.
	280	16	2	22-2714.					
	281	16	3	22-2715.					
	281	16	4	22-2716.					
	281	16	5	22-2717.					
	281	16	6	22-2718.					
	281	16	7	22-2719.					
	282	16	8	22-2720.					
	282	16	9	22-2721.					
Feb. 24....	291	28	1	36-301.					
	291	28	2	36-302.					
	291	28	3	36-303.					
	291	28	4	36-304.					
	291	28	5	36-305.					
	291	28	6	36-306.					
	291	28	7	36-307.					
	292	28	8	36-308.					
	292	28	9	36-309.					
July 21....	524	191	1	7-611.					
	532	191	1	S. 31-610. <sup>1</sup>					
	535	191	1	S. 47-202.					
	536	191	1	31-302; S. 31-804. <sup>1</sup>					
	550	191	1	8-111.					
	551	191	2-6	Temporary.					
	553	191	7	1-309.					
	553	191	8	Repealing.					
July 29....	565	215	1	7-611.					
Aug. 1....	625	223	1	8-111.					
	633	223	1	8-145.					
	634	223	1	8-154, 155.					
	657	223	1	32-822.					
Sept. 25....	716	310	1	5-101.					
	717	310	2	5-102.					
	717	310	3	Repealing.					
Sept. 29....	724	312	1-7	Special.					
1915									
Jan. 28....	800	20	-----	22-3415.					
Mar. 3....	869	75	1	24-424.					
	900	80	1	44-213.					
	904	80	1	6-502.					
	905	80	1	8-131; S. 10-128.					
	910	80	1	31-303; 47-202.					
	913	80	1	S. 4-402. <sup>2</sup>					
	915	80	1	33-321.					
	922	80	1	S. 24-418. <sup>1</sup>					
	924	80	2-6	Temporary.					
	925	80	7	1-309.					
	926	80	8	Repealing.					
Mar. 4....	1053	142	6	7-509.					
	1147	147	1	32-314.					
	1190	165	1	31-801.					
	1190	165	2	31-802.					
	1190	165	3	Repealing.					
	1190	166	-----	Appropriation.					
VOLUME 39					VOLUME 40				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1916					1917				
Feb. 25....	13	34	-----	43-111.					
Feb. 28....	21	37	1	7-204.					
Apr. 17....	51	77	1-6	Special.					
Apr. 27....	56	92	-----	S. 11-915.					
May 8....	65	115	-----	Special.					
May 18....	163	127	1-4	Special.					
	163	127	5	7-511.					
	164	127	5	R. '26, 44 Stat. 697, ch. 480, § 1. <sup>1</sup>					

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



STATUTES AT LARGE—Continued

VOLUME 40—Continued					VOLUME 41—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1917					1920				
May 22....	90	21	-----	Special.	Jan. 15....	387	39	1	31-701.
June 12....	126	27	-----	8-158 note.		387	39	2	31-702.
	133	27	1	S. '25, 43 Stat. 1323, ch. 556, § 1. <sup>2</sup>		388	39	3	31-703.
	157	27	1	S., U. S. C., title 28, §§ 483, 484, 530. <sup>1</sup>		388	39	4	31-704.
Oct. 6....	384	79	9	31-631.		388	39	5	31-705.
1918						388	39	6	31-706.
Mar. 28....	470	28	1	31-304.		388	39	7	31-707.
	494	28	1	32-822.		388	39	8	31-708.
	498	28	2	Temporary.		388	39	9	31-709.
Apr. 29....	538	65	-----	Special.		389	39	10	31-710.
May 6....	539	67	1	S. 6-504.		389	39	11	31-720.
	540	67	2,3	Temporary.		389	39	12	31-712.
	540	67	4,5	Appropriation.		389	39	13	31-713.
	541	67	6	6-503.		389	39	14	31-714.
	541	67	7	Temporary.		389	39	15	31-715.
	541	67	8	Obsolete.		389	39	16	31-716.
	541	67	9	R. '20, 41 Stat. 848, ch. 234, § 1.		390	39	17	31-717.
	541	67	10, 11	S. 6-504.	Jan. 24....	390	39	18	31-718.
	541	67	12	Appropriation.		396	54	1	4-402.
May 23....	560	82	-----	2-701.		397	54	1	4-404; S. 4-405. <sup>1</sup>
	560	83	-----	Temporary.		398	54	2	4-407.
May 31....	593	90	-----	Temporary.		398	54	3	Appropriation.
July 1....	650	113	1	8-148 to 150, 152.	Mar. 1....	398	54	4	4-107, 403.
	680	113	1	31-1012.		500	92	1	5-412.
	683	113	1	S. 11-1001 note. <sup>1</sup>		500	92	2-6	R. '38, 52 Stat. 802, ch. 534, § 15.
	724	114	-----	7-123 note.		501	92	7	5-415 note.
July 8....	823	139	1	31-631.	Apr. 19....	502	92	8-11	R. '38, 52 Stat. 802, ch. 534, § 15.
Aug. 31....	938	164	1	4-105.		555	153	1 (20)	11-735.
	950	164	1	8-161.		555	153	1 (35)	11-746.
	951	164	1	8-130, 161		555	153	1 (65)	11-312.
Sept. 19....	952-954	164	2-8	Temporary.		556	153	1 (67)	11-314.
	960	174	1	36-401.		556	153	1 (105)	13-108.
	961	174	2	36-402.		556	153	1 (115a)	21-310 note.
	961	174	3	36-403.		556	153	1 (123a)	20-116.
	961	174	4	36-404.		557	153	1 (126)	11-514.
	962	174	5	36-405.		557	153	1 (137a)	19-310.
	962	174	6	36-406.		557	153	1 (140)	19-312.
	962	174	7	Temporary.		558	153	1 (198)	11-1401.
	962	174	8	36-407.		558	153	1 (199)	11-1402.
	962	174	9	36-408.		558	153	1 (200)	11-1403.
	962	174	10	36-409.		558	153	1 (201)	11-1404.
	963	174	11	36-410.		559	153	1 (202)	11-1405.
	963	174	12	36-411.		559	153	1 (203)	11-1406.
	963	174	13	36-412.		559	153	1 (204)	11-1407.
	963	174	14	36-413.		560	153	1 (205)	11-1409.
	964	174	15	36-414.		560	153	1 (206)	11-1410.
	964	174	16	36-415.		560	153	1 (207)	11-1411.
	964	174	17	36-416.		560	153	1 (208)	11-1412.
	964	174	18	36-417.		560	153	1 (209)	11-1413.
	964	174	19	36-418.		561	153	1 (218)	11-1301.
	964	174	20	36-419.		561	153	1 (219)	11-1302.
	964	174	21	36-420.		561	153	1 (219a)	11-1303.
	964	174	22	36-421.		561	153	1 (220)	11-1304.
	964	174	23	36-422.		561	153	1 (276)	20-204.
Oct. 1....	1008	180	-----	Temporary.		561	153	1 (277)	20-205.
Nov. 4....	1019	200	-----	Temporary.		561	153	1 (278)	20-206.
1919						561	153	1 (279)	20-207.
Feb. 25....	1157	29	3	S. 11-202. 302.		562	153	1 (280)	20-208.
Feb. 27....	1213	84	-----	Special.		562	153	1 (306)	20-403.
Mar. 4....	1324	122	-----	24-101.		562	153	1 (307)	20-404.
	1325	122	-----	24-105.		562	153	1 (308)	20-405.
VOLUME 41						562	153	1 (308a)	20-118.
						563	153	1 (310)	18-402.
						563	153	1 (321)	18-305.
						563	153	1 (374)	18-702.
						563	153	1 (375)	18-703.
						563	153	1 (376)	18-704.
						563	153	1 (377)	18-705.
						563	153	1 (445)	16-301.
						564	153	1 (455)	16-311.
						564	153	1 (479a)	28-2403.
						565	153	1 (479b)	28-2404.
						565	153	1 (484a)	16-603.
						565	153	1 (485)	16-604.
						566	153	1 (487)	16-607.
						566	153	1 (491d)	7-205.
						566	153	1 (491h)	7-209.
						566	153	1 (726)	26-314.
						567	153	1 (808)	22-2801.
						567	153	1 (830a)	22-1404.
						567	153	1 (833a)	16-421.
						567	153	1 (1064)	14-302.
						567	153	1 (1073b)	14-406.
						567	153	1 (1173)	18-211.
						568	153	1 (1179)	28-2702.
						568	153	1 (1180)	28-2703.
						568	153	1 (1233)	S. 17-104.
						568	153	1 (1262)	38-201.
						569	153	1 (1422)	28-730.
						569	153	1 (1535a)	13-216.
						569	153	1 (1535b)	13-215.
						569	153	1 (1535c)	13-214.
						569	153	1 (1535d)	13-204.
						569	153	2	Effective date.
Dec. 5....	363	1	1	4-103, 151; S. 4-405. <sup>1</sup>	May 31....	726	217	-----	6-904.
	364	1	1	4-125.	June 4....	781	227	37	39-401.
	364	1	3	4-201.					
Dec. 18....	368	10	1	22-1625.					
	368	10	2	22-1626.					
	368	10	3	22-1627.					
	368	10	4	Repealing.					

<sup>1</sup>Superseded in part.



## STATUTES AT LARGE—Continued

VOLUME 41—Continued					VOLUME 42				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1920					1921				
June 4...	781	227	38	39-402.	May 27...	9	13	-----	22-1406.
	781	227	40	39-403.	June 10	20	18	-----	1-311.
June 5...	846	234	1	7-107 note.		23	18	214	31-1014.
	850	234	1	S. 31-610. <sup>1</sup>		23	18	301-303	47-202 note.
	852	234	1	S. 31-701, 702. <sup>1</sup>		24	18	304	32-809; 45-707; 47-107, 119, 123,
	855	234	1	31-804; S. 31-305.					202 note, 204, 310, 311, 601.
	865	234	1	32-912, 1009.		24	18	305	31-1007; 47-202 note, 309.
	869	234	1	24-418.		24	18	306-318	47-202 note.
	872	234	2-6	Temporary.	Aug. 15...	170	66	-----	Special.
	873	234	7	1-314.	Aug. 24...	200	91	1-5	Temporary.
	874	234	8	Temporary.		201	92	-----	10-113.
	893	235	1	8-109.	Dec. 16...	348, 349	7	1-3	27-121 note.
	1017	253	1	31-631.		349	8	-----	Special.
Dec. 21...	1062	272	-----	Special.	1922				
	1081	2	1	34-101.	Mar. 4...	401	93	1	35-1101.
	1082	2	2	34-102.		402	93	2	35-1102.
1921						402	93	3	35-1103.
Feb. 22...	1113	70	1	S. 1-240.		404	93	4	35-1104.
	1117	70	1	7-507.		404	93	5	35-1105.
	1142	70	2-6	Temporary.		405	93	6	35-1106.
	1144	70	7	1-236, 726; 5-316; 6-504; 7-502		405	93	7	35-1107.
				note, 505, 512, 519; 8-149;		405	93	8	35-1108.
				9-102; 10-135; 11-204, 626,		406	93	9	35-1109.
				1509; 27-130; 43-808, 912;		407	93	10	35-1110.
				47-126, 127, 129, 130, 132;		408	93	11	35-1111.
				49-110.		408	93	12	35-1112.
						408	93	13	35-1113.
Mar. 1...	1144	70	8	1-313.		408	93	14	35-1114.
	1156	89	1	S. 47-1001. <sup>1</sup>		408	93	15	35-1115.
	1194	94	-----	29-103.		409	93	16	35-1116.
	1195	95	1	47-713.		409	93	17	35-1117.
	1196	95	2	47-714.		409	93	18	35-1118.
	1196	95	3	S. 47-715.		410	93	19	35-1119.
	1196	95	4	47-716.		410	93	20	35-1120.
	1196	95	5	47-717.		411	93	21	35-1121.
Mar. 3...	1196	95	6	Repealing.		411	93	22	35-1122.
	1217	118	1	10-101.		412	93	23	35-1123.
	1217	118	2	10-102.		412	93	24	35-1124.
	1217	118	3	10-103.		412	93	25	35-1125.
	1218	118	4	10-104.		413	93	26	35-1126.
	1218	118	5	10-105.		413	93	27	35-1127.
	1219	118	6	10-106.		414	93	28	35-1128.
	1219	118	7	10-107.		414	93	29	35-1129.
	1219	118	8	10-108.		414	93	30	35-1130.
	1219	118	9	10-109.		414	93	31	35-1131.
	1219	118	10	10-110.		414	93	32	35-1132.
	1219	118	11	10-111.	Mar. 8	417	98	1, 2	Special.
	1220	118	12	10-112.	Mar. 20	468	111	-----	Special.
	1220	118	13	10-113.	Apr. 25	499	142	-----	Special.
	1221	118	14	10-114.	Apr. 26	500	147	-----	26-103.
	1221	118	15	10-115.	May 11...	540	188	-----	Special.
	1223	118	16	10-116.	May 19...	543	194	-----	11-1408.
	1223	118	16½	10-117.	May 22...	543	197	1-20	Temporary.
	1223	118	17	10-118.	June 26	665	241	-----	29-503 to 510.
	1223	118	18	10-119.	June 27	665	246	-----	11-1508.
	1223	118	19	10-120.	June 29...	668	249	1	24-422; 27-130 note; 31-301 note;
	1223	118	20	10-122.					32-401 note; 47-201, 204; R.
	1224	118	21	10-123.					'38, 52 Stat. 375, ch. 223, §8. <sup>1</sup>
	1224	118	22	10-124.		669	249	1	47-501 to 503, 713, 1207.
	1224	118	23	10-125.		689	249	1	31-1106.
	1224	118	24	10-126.		702	249	1	32-307.
	1224	118	25	10-127.		711, 712	249	2-6	Temporary.
	1224	118	26	10-128.	June 30...	767	256	-----	Temporary.
	1224	118	27	10-129.	July 1...	820	273	-----	22-1410.
	1224	118	28	10-130.	Sept. 6...	836	303	-----	Special.
	1225	118	29	10-131.		837	304	-----	5-101.
	1225	118	30	10-132.	Sept. 14...	841	308	1	4-301.
	1225	118	31	10-133.		841	308	2	4-302.
	1225	118	32	10-134.		842	308	3	4-303.
	1225	118	33	10-136, 137 note.		842	308	4	4-304.
	1251	121	-----	7-123 note.		842	308	5	4-305.
	1310	125	1	11-703, 705 to 707, 725, 726, 729,		842	308	6	S., U. S. C., title 5, § 670.
				731; 16-1903; 44-102.		843	308	7	4-306.
	1310	125	2	11-702; 22-1303.		843	308	8	Effective date.
	1310	125	3	11-715.	Sept. 16...	845	318	1	7-801.
	1311	125	4	11-320, 716.		845	318	2	7-802.
	1311	125	5	11-717.		845	318	3	7-803.
	1311	125	6	11-718, 724.		845	318	4	7-804.
	1311	125	7	11-719.		846	318	5	7-805.
	1311	125	8	11-720.		846	318	6	7-806.
	1312	125	9	11-730, 733, 734; 13-217; 16-335,		846	318	7	Appropriation.
				1402 note, 1809.		846	319	-----	47-823.
	1312	125	10	11-721.	Sept. 21...	1011	371	1, 2	Special.
	1312	125	11	11-722.	Sept. 22...	1020	408	1-5	Special.
	1312	125	12	11-723, 739; 17-101, 104.	1923				
	1312	125	13	11-701.	Jan. 25...	1218	44	-----	Temporary
	1313	125	14	11-718.	Feb. 17...	1261	94	1	2-901.
	1313	125	15	Repealing.		1261	94	2	2-902.
Mar. 4	1382	161	1	8-147.		1261	94	3	2-903.
	1412	161	1	11-403.		1261	94	4	2-904.
	1441	171	1-9	Special.		1261	94		

<sup>1</sup> Repealed in part.<sup>2</sup> Superseded in part.



PARALLEL REFERENCE TABLES  
STATUTES AT LARGE—Continued

VOLUME 42—Continued				
Date	Page	Chapter	Section	D. C. 1940
1923				
Feb. 17...	1262	94	5	2-905.
	1262	94	6	2-906.
	1262	94	7	2-907.
	1263	94	8	2-908.
	1263	94	9	2-909.
	1263	95	1	4-507, 517.
	1263	95	2	Repealing.
Feb. 20...	1280	100	-----	Special.
Feb. 28...	1327	147	-----	Special.
	1333	148	1	S. 1-240.
	1338	148	1	7-511.
	1357	148	1	24-418.
	1358	148	1	32-906.
	1360	148	1	32-601.
	1361	148	1	32-501, 502.
	1366	148	1	8-160 note.
	1369-	148	2-6	Temporary.
	1371			
	1371	149	1-8	Temporary.
Mar. 4...	1446	247	1	7-123 note.
	1485	260	-----	Temporary.
	1446	247	2	Special.
	1488	265	1-14	1-301, 302; 10-101; 11-204, 206, 708; 19-403; 24-101, 105; 47- 604, 1214.
	1506	278	-----	13-214.
	1533	292	1	24-417.
	1560	295	-----	11-1001 note.

VOLUME 43				
Date	Page	Chapter	Section	D. C. 1940
1924				
Apr. 14...	95	102	1, 2	Special.
Apr. 23...	106	131	1	47-1901.
	106	131	2	47-1902.
	107	131	3	47-1903.
	107	131	4	4-1904.
	107	131	5	47-1905.
	107	131	6	47-1906.
	107	131	7	47-1907.
	108	131	8	47-1908.
	108	131	9	47-1909.
	108	131	10	47-1910.
	108	131	11	47-1911.
	108	131	12, 13	R. '37, 50 Stat. 683, ch. 690, title IV, § 6.
	109	131	14	47-1912.
	109	131	15	47-1913.
	109	131	16	47-1914.
	110	131	17	47-1915.
	110	131	18	47-1916.
May 3...	115	148	-----	7-107 note.
May 17...	120	156	1-3	Temporary.
May 21...	135	163	-----	47-821.
May 24...	153	185	-----	Special.
May 27...	174	199	1	S. 4-108.
	175	199	2	S. 4-405.
	175	199	3	4-180. '201, 410
	175	199	4	4-202.
	175	199	5	4-203.
	175	199	6	4-204.
	176	199	7	4-503, 511, 515, 516.
	176	199	8	4-205.
	176	199	9	4-208.
	176	199	10	Effective date.
	177	201	-----	7-107 note.
May 28...	177	202	1	2-501.
	177	202	2	2-502.
	178	202	3	2-503.
	178	202	4	2-504.
	179	202	5	2-505.
	179	202	6	2-506.
	179	202	7	2-507.
	179	202	8	2-508.
	179	202	9	2-509.
	179	202	10	2-510.
	180	202	11	2-511.
	180	202	12	2-512.
	180	202	13	2-513.
	181	202	14	2-514.
	181	202	15	2-515.
	181	202	16	2-516.
	181	202	17	2-517.
	181	202	18	2-518.
	182	202	19	2-519.
	182	202	20	2-520.
	182	202	21	2-521.
	182	202	22	2-522.
June 3...	363	244	2	39-607 note.
June 4...	367	250	1	31-610.
	370	250	2	31-115, 617.
	370	250	3	31-115, 618.

VOLUME 43—Continued				
Date	Page	Chapter	Section	D. C. 1940
1924				
June 4...	371	250	4	Temporary.
	371	250	5	31-619.
	372	250	6	31-621.
	373	250	7	31-623.
	373	250	8	31-627.
	373	250	9	31-628.
	374	250	10	31-629.
	374	250	11	31-119.
	374	250	12	31-109.
	374	250	13	31-601.
	374	250	14	31-602.
	374	250	15	31-603.
	375	250	16	31-604.
	375	250	17	31-605.
	375	250	18	31-606.
	375	250	19	Repealing.
June 5...	392	264	-----	31-1023.
June 6...	463	270	1	8-101.
	463	270	2	8-102.
	463	270	3	8-106.
	464	270	4	8-107.
	464	271	1	8-162.
	464	271	2	8-163.
	470	275	4	39-401.
June 7...	533	292	2	Temporary.
	539	302	1	1-204 note; 27-130 note; 31-301 note; 32-401 note.
	550	302	1	7-502; 47-1918.
	560	302	1	4-503.
	564	302	1	11-749.
	568	302	1	32-308, 310.
	574	302	1	8-151.
	576	302	2-6	Temporary.
	593	304	-----	7-107 note.
	599	315	1	S. 2-328.
	599	315	2	S. 2-301.
	599	315	3	S. 2-302.
	600	315	4	S. 2-303.
	600	315	5	S. 2-304.
	600	315	6	S. 2-305.
	600	315	7	S. 2-306.
	600	315	8	S. 2-307.
	600	315	9	S. 2-308.
	601	315	10	S. 2-309.
	601	315	11	S. 2-323.
	601	315	12	S. 2-324.
	601	315	13	S. 2-322 to 324.
	601	315	14	S. 2-325.
	602	315	15	S. 2-326.
	602	315	16	S. 2-311, 325.
	602	315	17	S. 2-312.
	602	315	18	S. 2-312.
	603	315	19	S. 2-313.
	603	315	20	S. 2-314.
	603	315	21	S. 2-315.
	603	315	22	S. 2-316.
	604	315	23	S. 2-317.
	604	315	24	S. 2-318.
	604	315	25	S. 2-319.
	604	315	26	S. 2-320, 325.
	604	315	27	S. 2-328.
	604	315	28	S. 2-329.
	604	315	29	Repealing.
	632	323	1-4	Special.
	647	340	-----	5-405.
	666	370	1, 2	Special.
	667	373	-----	Special.
Dec. 2...	671	1	-----	Special.
Dec. 13...	713	8	-----	11-1207.
	713	9	1	2-1001.
	713	9	2	2-1002.
	713	9	3	2-1003.
	714	9	4	2-1004.
	714	9	5	2-1005.
	714	9	6	2-1006.
	714	9	7	2-1007.
	714	9	8	2-1008.
	714	9	9	2-1009.
	714	9	10	2-1010.
	714	9	11	2-1011.
	714	9	12	2-1012.
	715	9	13	2-1013.
	715	9	14	2-1014.
	715	9	15	2-1015.
	715	9	16	2-1016.
	715	9	17	2-1017.
	715	9	18	2-1018.
	715	9	19	2-1019.
	715	9	20	2-1020.
	716	9	21	2-1021.
	716	9	22	2-1022.
	716	9	23	2-1023.
	716	9	24	2-1024.
	716	9	25	2-1025.
	717	9	26	2-1026.
	717	9	27	2-1027.
	717	9	28	2-1028.
	717	9	29	2-1029.



## STATUTES AT LARGE—Continued

VOLUME 43—Continued					VOLUME 43—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1924					1925				
Dec. 13	718	9	30	2-1030.	Mar. 3	1126	443	17	Effective date.
	718	9	31	Repealing.		1126	443	18	40-615.
	718	9	32	Effective date.		1135	460	1	32-602.
	718	10	1, 2	Special.		1135	460	2	32-603.
1925						1135	460	3	32-604.
Jan. 17	752	84	-----	S. 4-405.		1135	460	4	32-605.
Jan. 28	794	103	-----	Special.		1135	460	5	32-606.
Jan. 30	798	115	1	22-2404, 2801; 23-701.		1135	460	6	32-607.
	799	115	2	23-702.		1135	460	7	32-608.
	799	115	3	23-703.		1136	460	8	32-609.
	799	115	4	23-704.		1136	460	9	32-610.
	799	115	5	Repealing.		1136	460	10	32-611.
	799	116	1	7-123.		1137	460	11	32-612.
	800	116	2	7-124.		1137	460	12	32-613.
Feb. 2	804	127	-----	Temporary.		1137	460	13	32-614.
Feb. 4	806	140	Art. I, 1	31-201.		1137	460	14	32-615.
	806	140	Art. I, 2	31-202.		1138	460	15	32-616.
	806	140	Art. I, 3	31-203.		1138	460	16	32-617.
	806	140	Art. I, 4	31-204.		1138	460	17	32-618.
	806	140	Art. I, 5	31-205.		1139	460	18	32-619.
	807	140	Art. I, 6	31-206.		1139	460	19	32-620.
	807	140	Art. I, 7	31-207.		1139	460	20	32-621.
	807	140	Art. II, 1	31-208.		1140	460	21	32-622.
	807	140	Art. II, 2	31-209.		1140	460	22	32-623.
	807	140	Art. II, 3	31-210.		1140	460	23	32-624.
	807	140	Art. III, 1	31-211.		1140	460	24	32-625.
	808	140	Art. III, 2	31-212.		1140	460	25	32-626.
	808	140	Art. III, 3	31-213.		1140	460	26	32-627.
	808	140	4	Repealing.		1141	460	27	32-628.
	808	140	5	Effective date.		1141	460	28	32-629.
Feb. 10	821	198	-----	1-501.		1143	462	29	Repealing.
Feb. 12	887	215	-----	Special.		1143	462	-----	31-1023.
Feb. 19	950	267	-----	Special.		1197	467	15	Special.
Feb. 21	960	285	-----	7-107 note.		1216	477	1	32-606.
	961	289	-----	5-405.		1222	477	1	47-306.
Feb. 24	974	313	1-7	Special.		1226	477	1	47-1919.
	975	314	-----	Temporary.		1239	477	1	11-749.
Feb. 25	979	321	-----	8-102 note.		1249	477	2-6	Temporary.
Feb. 26	983	339	1	4-202, 208; 5-412.	Mar. 4	1251	525	-----	Special.
	983	339	3	5-204; 7-1204, 1207; 8-125; 11-1104; 47-409		1264	527	1	43-503.
	986-993	342	1-4	Temporary.		1265	527	2	43-502.
	993	342	5	31-804.		1265	527	3	43-502, 503.
	993	342	6-8	Temporary.		1265	527	-----	2-1501 to 1507.
	994	342	9	47-203.		1284	545	1	31-1108.
	1001	355	1-21	R. '39, 53 Stat. 1408, ch. 691, § 3.		1320	556	1	Temporary.
Feb. 27	1004	358	1	33-301.		1323	556	1	-----
	1004	358	2	33-302.	VOLUME 44				
	1004	358	3	33-303.					
	1005	358	4	33-304.	Date	Page	Chapter	Section	D. C. 1940
	1005	358	5	33-305.	1925				
	1005	358	6	33-306.	Dec. 22	1	3	-----	Temporary.
	1005	358	7	33-307.	1926				
	1005	358	8	33-308.	Mar. 3	167	44	1	47-1917.
	1005	358	9	33-309.	Mar. 11	203	52	1	Special.
	1005	358	10	33-310.		203	52	2	Appropriation.
	1006	358	11	33-311.		203	52	3	Repealing.
	1006	358	12	33-312.	Mar. 16	208	58	1	3-101; 32-319, 502, 602, 604, 605, 607, 616, 618, 625, 626, 902, 904 to 906, 908, 911.
	1006	358	13	33-103, 313.		208	58	2	3-102; 32-502, 602, 604, 605, 607, 616, 618, 625, 626.
	1007	358	14	33-314.		208	58	3	3-103.
	1007	358	15	33-315.		208	58	4	3-104.
	1007	358	16	33-316.		209	58	5	3-105; 32-605.
	1007	358	17	33-317.		209	58	6	3-106; 24-409, 412, 415, 421; 32-501.
	1008	358	18	33-318.		209	58	7	3-107; 24-411, 419, 421.
	1008	358	19	33-319.		210	58	8	Temporary.
	1008	358	20	Repealing.		210	58	9	3-108, 109.
Feb. 28	1075	371	1	39-107 note.		210	58	10	3-110 to 113.
	1077	371	1	39-501 note.		210	58	11	3-114, 116 to 121.
Mar. 2	1096	395	1	7-517.		211	58	12	3-122.
	1097	395	2	Appropriation.		211	58	13	3-123.
	1097	395	3	7-518.		211	58	14	Effective date.
Mar. 3	1102	416	-----	45-703.	Apr. 1	229	98	15	Repealing.
	1103	417	546	42-101, 102.		229	98	1	37-101.
	1103	417	547	42-103.		229	98	2	37-102.
	1108	423	3	37-101 note.		229	98	3	37-103.
	1119	443	1	40-601.		229	98	4	37-104.
	1119	443	2	40-602; R. '31, 46 Stat. 1424, ch. 317, § 1.		230	98	5	37-105.
	1119	443	3	11-601.		230	98	6	37-106.
	1120	443	3	11-621, 623.	Apr. 3	234	103	-----	11-512.
	1120	443	4	11-616.	Apr. 13	245	123	1, 2	Temporary.
	1120	443	5 (a)	11-617.	Apr. 14	251	140	1	43-1531.
	1120	443	5 (b)	11-1407.		252	140	2	43-1532.
	1121	443	6	40-603.	Apr. 15	253	145	1	22-3404.
	1121	443	7	40-301.		253	145	2	22-3405.
	1123	443	8	40-303.		253	145	3	22-3406.
	1123	443	9	40-605.	Apr. 16	298	150	-----	5-405.
	1124	443	10	40-609.					
	1124	443	11	40-610.					
	1125	443	12	40-611.					
	1125	443	13	40-302.					
	1125	443	14	R. '31, 46 Stat. 1426, ch. 317, § 4.					
	1125	443	15	Temporary.					
	1125	443	16 (a)	40-614; Repealing.					
	1126	443	16 (b)	40-613.					
	1126	443	16 (c)	40-614.					



## STATUTES AT LARGE—Continued

## VOLUME 44—Continued

Date	Page	Chapter	Section	D. C. 1940
1926				
Apr. 24...	322	176	1	11-1504; 19-403, 404; 45-709; 47-126.
	322	176	2	19-405; 45-704, 710.
Apr. 26...	323	183	1	11-1512.
	323	183	2	11-1513.
	324	183	3	11-1514.
	324	183	5	Repealing and effective date.
Apr. 29...	347	195	Title II	24-423.
Apr. 30...	374	198		7-109, 113, 115; 8-101.
	376	198		7-122.
May 1...	380	207		Special.
May 4...	394	234		8-169.
May 5...	405	239		Special.
May 7...	496	251		8-161 note.
May 10...	417	276	1	32-606.
	427	276	1	7-603.
	430	276	1	7-701 note.
	433	276	1	31-305.
	441	276	1	11-749.
	451	276	2-6	Temporary.
	453	276	7	1-315.
May 22...	622	370		Special.
	627	372		7-1201.
May 25...	635	381		4-131, 406.
May 26...	657	402	1-3	Temporary.
May 28...	675	418	1	7-219.
	676	418	2	7-220.
	676	419		30-208.
June 7...	697	480	1	47-126.
	697	480	2	7-511.
	697	481	1, 2	Special.
	698	482	1, 2	Special.
June 10...	716	528	1	22-903.
	716	528	3	22-905.
June 11...	727	556	1	31-701, 702.
	728	556	1	31-703 to 707.
	729	556	1	31-708 to 710.
	730	556	1	31-712 to 716.
	731	556	1	31-717 to 720.
	731	556	2	31-720 note.
June 14...	741	577		11-1407.
June 22...	758	647	1	32-701.
	759	647	2	32-702.
	759	647	3	32-703.
	759	647	4	32-704.
	759	647	5	32-705.
	759	647	6	32-706.
	759	647	7	32-707.
	759	647	8	32-708.
	760	647	9	32-709.
	760	647	10	32-710.
June 23...	762	660		Special.
June 25...	769	675		Special.
June 26...	773	697		Special.
	774	698		Special.
June 29...	777	707		Special.
July 3...	809	736		7-107 note.
	809	737	1	48-201.
	810	737	2	48-202.
	810	737	3	48-203.
	810	737	4	48-204.
	810	737	5	48-205.
	811	737	6	48-206.
	811	737	7	48-207.
	811	737	8	48-208.
	811	737	9	48-209.
	811	737	10	48-210.
	811	737	11	48-211.
	812	739	1	40-602.
	812	739	2	40-301.
	814	739	3	40-302.
	814	739	4	40-603.
	814	739	5	40-605.
	831	755		17-102.
	832	759	1	47-604, 605, 1201.
	833	759	2	47-1205.
	833	759	3	47-711.
	833	759	4	47-713, 1202.
	833	759	5	47-1209.
	833	759	6	47-1206.
	834	759	7	47-1213.
	834	759	8	47-601.
	834	759	9	47-1001.
	834	759	10	47-702, 706; S. 47-708, 709.
	834	759	11	Effective date.
	834	760	1	4-202.
	834	760	2	4-207.
	835	760	3	40-613.
	837	766	1, 2	Special.
	838	768	1	6-601.
	838	768	2	6-602.
	839	768	3	6-603.
	839	768	4	6-604.
	839	768	5	6-605.
	839	768	6	6-606.
	839	768	7	6-607.
	839	768	8	6-608.

## VOLUME 44—Continued

Date	Page	Chapter	Section	D. C. 1940
1926				
July 3...	840	768	9	Effective date
	850	771	1	S. 43-1520.
	892	784	1	11-1407.
	901	794	1, 2	Special.
Dec. 13...	919	6	1	11-202, 302.
	920	6	2	Effective date.
Dec. 15...	920	8	1	43-201.
	921	8	2	43-202.
	921	8	3	43-203.
	921	8		43-205.
1927				
Jan. 5...	931	20	1, 2	Special.
Jan. 12...	934	26	1, 2	Special.
	936	27	1	31-1023.
Jan. 13...	971	28	1-3	Special.
	972	29	1-8	Special.
Jan. 14...	974	32		Special.
Jan. 20...	1007	40		Special.
Feb. 5...	1056	65	1-3	Special.
Feb. 9...	1064	87		7-612.
Feb. 10...	1067	100		21-301.
	1067	101		21-126.
Feb. 14...	1090	126	1-3	Special.
Feb. 23...	1176	171		1-101 note; page LXI.
Feb. 26...	1249	220		11-1418.
Mar. 1...	1262	245	1, 2	Special.
Mar. 2...	1297	271	1	32-606.
	1301	271	1	45-703 note.
	1303	271	1	47-1001.
	1308	271	1	7-603.
	1314	271	1	31-305.
	1317	271	1	4-181.
	1321	271	1	11-749.
	1323	271	1	3-124, 125.
	1332	271	2-6	Temporary.
Mar. 3...	1349	301	1, 2	Special.
	1351	304		43-412.
	1351	305	1	7-520.
	1352	305	2	7-521.
	1352	305	3	Appropriation.
	1352	306	1	7-515.
	1353	306	2	Appropriation.
	1353	306	3	7-1215.
	1354	306	4	7-516.
	1357	312	1-4	Special.
	1369	331		Special.
	1379	343	1-4	22-1603.
	1383	349		21-302.
	1383	350		21-103, 110.
	1386	354	1, 2	32-503.
	1394	364		11-307.
	1397	366		Special.
	1399	373		Special.
Mar. 4...	1413	496		S. 2-314.
	1413	497	1	Amendment.
	1413	497	2	2-602.
	1414	497	3	2-606.
	1415	497	4	2-609.
	1415	497	5	Effective date.
	1423	507	1, 2	Special.

## VOLUME 45

Date	Page	Chapter	Section	D. C. 1940
1927				
Dec. 22...	11	5		43-1511.
1928				
Jan. 13...	51	9	1, 2, 4	Special.
Feb. 28...	156	112		Special.
Mar. 5...	193	127		Special.
Mar. 30...	398	303		Special.
Apr. 6...	410	325		11-1509.
Apr. 11...	420	350	1, 2	Special.
Apr. 13...	429	369		4-203.
Apr. 21...	440	398	1	23-403.
	440	398	2	23-404.
	441	398	3	23-405.
	441	398	4	23-406.
	441	398	5	23-407.
	441	398	6	23-408.
	441	398	7	23-409.
	442	398	8	23-410.
May 2...	483	483		Special.
May 14...	509	545	1	28-2301.
	510	545	2	28-2302.
	510	545	3	28-2303.
	510	545	4	28-2304.
	510	545	5	28-2305.



## STATUTES AT LARGE—Continued

VOLUME 45—Continued					VOLUME 45—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1928					1928				
May 14...	511	545	6	28-2306.	Dec. 22...	1070	48	1	8-103.
	511	545	7	28-2307.		1070	48	2	8-105.
	511	545	8	28-2308.	1929				
	511	545	9	28-2309.	Jan. 26...	1139	105	-----	31-101.
	512	545	10	28-2310.	Feb. 8...	1156	163	-----	22-1106.
	512	545	11	28-2311.	Feb. 11...	1160	173	1	1-902.
	512	545	12	28-2312.		1160	173	2	1-903.
	512	545	13	28-2313.		1160	173	3	1-904.
	512	545	14	28-2314.		1161	173	4	1-905.
	512	545	15	Repealing.	Feb. 14...	1173	197	1	R. '36, 49 Stat. 1155, ch. 111, § 5.
	512	545	16	Effective date.		1173	197	2	Repealing.
May 15...	533	568	1	26-201.		1174	198	-----	Special.
	534	568	2	26-202.	Feb. 18...	1226	258	-----	40-301.
	534	568	3	16-333.		1226	259	1	47-1304.
May 16...	565	572	-----	6-904.		1226	259	2	47-1305.
	583	580	-----	8-168 note.		1226	259	3	47-1210.
	590	584	1-3	Special.		1227	259	4	47-1205.
May 17...	600	612	1	35-501.		1227	259	5	47-1209.
	600	612	2	36-502.		1227	259	6	47-1206.
	600	612	3	Effective date.		1228	259	7	47-1213.
May 21...	622	655	1-6	Special.	Feb. 23...	1228	259	8	Repealing.
	645	659	1	11-204; 31-609; 32-506; Appropriation.		1260	303	1	31-501.
	646	659	1	S. 47-2342.*		1260	303	2	31-502.
	649	659	1	1-240; 45-703 note.		1260	303	3	31-503.
	650	659	1	47-1001, 1008.		1260	303	4	31-504.
	657	659	1	7-603.		1260	303	5	31-505.
	662	659	1	31-305.		1260	303	6	31-506.
	669	659	1	6-115.		1260	303	7	31-507.
	670	659	1	11-749.	Feb. 25...	1261	305	-----	Temporary.
	671	659	1	11-211.		1262	314	1	S. 4-108; Appropriation.
	681	659	2-6	Temporary.		1268	314	1	47-1001.
	689	666	-----	Special.		1276	314	1	31-114, 118.
May 22...	713	690	-----	Special.		1279	314	1	31-305, 609.
May 23...	720	717	1,2	Special.		1285	314	1	30-115.
May 24...	726	726	-----	8-101.		1286	314	1	47-116, 117.
May 29...	945	858	-----	Special.		1287	314	1	11-207.
	950	861	1	2-1014, 1016, 1019.		1289	314	1	47-115.
	951	861	1	2-1022, 1024, 1028.		1290	314	1	47-131.
	952	861	1	2-1029.		1292	314	1	32-504.
	953	861	1	2-1030.	Feb. 27...	1298	314	2-7	Temporary.
	953	861	2	2-1031.		1326	352	1	2-101, 201, 207.
	953	862	1	35-918 note.		1327	352	2,3	2-102.
	953	862	2	35-918.		1327	352	4,5	2-103.
	953	862	3	35-918.		1327	352	6	2-104.
	953	862	4	35-920.		1328	352	7	2-105.
	953	862	5	35-921.		1328	352	8,9	2-106.
	953	862	6	35-918 note; Repealing.		1328	352	10	2-107.
	953	863	-----	7-221.		1329	352	11	2-108.
	986	901	1	47-107 note.		1329	352	12	2-109.
	992	901	1	32-318.		1330	352	13	2-110.
	996	901	1	7-706.		1330	352	14	2-111.
	997	905	-----	7-107 note.		1331	352	15	2-112.
	998	908	1	36-201.		1331	352	16, 17	2-113.
	999	908	2	36-202.		1331	352	18	2-114.
	999	908	3	36-203.		1332	352	19	2-115.
	999	908	4	36-204.		1332	352	20	2-116.
	999	908	5	36-205.		1332	352	21	2-117.
1000	908	6	36-206.			1333	352	22	2-118.
1000	908	7	36-207.			1333	352	23	2-119.
1000	908	8	36-208.			1334	352	24	2-120.
1000	908	9	36-209.			1335	352	25	2-121.
1001	908	10	36-210.			1336	352	26	2-122.
1001	908	11	36-211.			1337	352	27	2-123.
1002	908	12	36-212.			1337	352	28-30	2-124.
1002	908	13	36-213.			1337	352	31-33	2-125.
1002	908	14	36-214.			1338	352	34, 35	2-126.
1003	908	15	36-215.			1338	352	36	2-127.
1003	908	16	36-216.			1338	352	37	2-128.
1003	908	17	36-217.			1338	352	38	2-129.
1003	908	18	36-218.			1338	352	39	2-130.
1004	908	19	36-219.			1338	352	40	2-131.
1004	908	20	36-220.			1338	352	41	2-132.
1004	908	21	36-221.			1339	352	42	2-133.
1004	908	22	36-222.			1339	352	43	2-134.
1005	908	23	36-223.			1340	352	44	2-135.
1006	908	24	36-224.			1340	352	45	2-136.
1006	908	25	36-225.			1340	352	46	2-137.
1006	908	26	31-213.			1340	352	47	2-138.
1006	908	27	Repealing.			1340	352	48	2-139.
1006	908	28	36-226.			1340	352	49	2-140.
1006	908	29	36-227.			1341	353	-----	7-126.
1006	908	30	Effective date.		Feb. 28...	1343	357	1	31-610.
1007	910	1	Temporary.			1344	357	2	31-620.
1007	910	2	49-101.			1344	357	3	Temporary.
1007	910	3	Temporary.			1344	357	4	31-621.
1007	910	4	49-102.			1344	357	5	Effective date.
1007	910	5	49-103.			1408	379	1	9-201.
1007	910	6	49-104.			1409	379	2	Appropriation.
1008	910	7	49-105.			1412	384	1	8-169.
1008	910	8	49-106.			1412	384	2	8-170.
1008	910	9	Repealing.		Mar. 1...	1415	416	1	16-619.
1008	910	10	Appropriation.			1415	416	2	16-620.
Dec. 12...	1021	24	-----	35-916.		1416	416	3	16-621.
Dec. 20...	1055	40	-----	35-901.		1416	416	4	16-622.
	1056	40	2	Repealing.		1416	416	5	16-623.
	1056	41	-----	11-301.		1416	416	6	16-624.

\* Superseded in part.



## STATUTES AT LARGE—Continued

## VOLUME 45—Continued

Date	Page	Chapter	Section	D. C. 1940
1929				
Mar. 1	1416	416	7	16-625.
	1416	416	8	16-626.
	1417	416	9	16-627.
	1417	416	10	16-628.
	1418	416	11	16-629.
	1418	416	12	16-630.
	1418	416	13	16-631.
	1418	416	14	16-632.
	1419	416	15	16-633.
	1419	416	16	16-634.
	1419	416	17	16-635.
	1420	416	18	16-636.
	1420	416	19	16-637.
	1420	416	20	16-638.
	1420	416	21	16-639.
	1421	416	22	16-640.
	1421	416	23	16-641.
	1421	416	24	16-642.
	1421	416	25	16-643.
	1422	416	26	16-644.
	1425	422	1	32-312.
	1425	422	2	32-312 note.
	1437	439	-----	16-601 to 604.
	1438	439	-----	16-606 to 611.
Mar. 2	1475	488	2	Repealing.
	1487	501	-----	10-137.
	1503	523	-----	29-414.
	1504	523	-----	29-415 to 417.
	1505	523	-----	29-418, 419.
	1519	540	1	2-401.
	1519	540	2	2-402.
	1519	540	3	2-403.
	1520	540	4	2-404.
	1520	540	5	Obsolete.
	1520	540	6	2-405.
	1521	540	7	2-406.
	1521	540	8	2-407.
	1521	540	9	2-408.
	1522	540	10	2-409.
	1522	540	11	2-410.
	1522	540	12	2-411.
	1523	542	-----	8-159.
	1540	585	-----	Special.
	1540	586	1	49-108.
	1541	586	2	49-191.
	1541	586	3	49-102.
	1542	586	4	49-107.
	1542	586	5	U. S. C., tit. 1, § 54b.
	1542	586	6	U. S. C., tit. 1, § 54c.
	1542	586	7	49-109.
Mar. 4	1543	682	1	7-127.
	1543	682	2	7-128.
	1543	682	3	7-129.
	1544	682	4	7-130.
	1544	682	5, 6	Special.
	1545	682	7	7-131.
	1545	682	8	Special.
	1549	688	1	6-505.
	1549	688	2	6-506.
	1549	688	3	6-507.
	1549	688	4	6-508.
	1550	688	5	6-509.
	1550	688	6	6-510.
	1556	696	1	4-701.
	1556	696	2	4-702.
	1556	696	3	4-703.
	1557	696	4	4-704.
	1694	708	1-4	9-105 note.
	1696	708	5, 6	Special.
	1699	714	1-6	Special.

## VOLUME 46

Date	Page	Chapter	Section	D. C. 1940
1929				
June 15	19	25	-----	Special.
Dec. 23	55	17	-----	Special.
1930				
Jan. 31	62	32	1	31-401.
	62	32	2	31-402.
	62	32	3	31-403.
	62	32	4	31-404.
	62	32	5	31-405.
	62	32	6	31-406.
	62	32	7	Effective date.
Mar. 26	97	92	-----	6-505 note.
Apr. 3	139	102	-----	7-103.
Apr. 12	158	135	1	35-922.
	158	135	2	35-923.
	159	135	3	35-924.

## VOLUME 46—Continued

Date	Page	Chapter	Section	D. C. 1940
1930				
Apr. 12	159	135	4	35-925.
	160	135	5	35-926.
	160	135	6	35-927.
	160	135	7	35-928.
Apr. 17	170	176	-----	3-103.
Apr. 18	218	186	-----	32-312 note.
Apr. 29	258	220	-----	5-405.
May 13	269	250	-----	7-123 note.
May 14	328	277	1	4-301.
	329	277	2	4-302.
	329	277	3	4-303.
	329	277	4	4-306.
May 15	334	286	-----	6-511.
May 16	366	291	1	5-410.
	367	291	2	5-411.
May 29	471	349	3 (e)	1-217.
	482	354	1	8-102 note.
	485	354	4	8-106 note.
	486	358	-----	11-1510.
	487	360	-----	Special.
June 5	500	400	-----	1-902.
June 6	522	411	1	47-2008.
	522	411	2	Repealing.
	523	412	-----	10-137 note.
June 10	538	439	-----	29-603.
June 19	785	537	-----	11-301.
	785	538	-----	11-201.
June 26	816	615	-----	7-123 note.
June 27	821	641	-----	Executed.
June 30	838	764	-----	43-1530.
July 1	839	783	1	4-108.
	840	783	2	4-405.
	840	783	3	4-801.
	840	783	4	4-802.
	840	783	5	4-503, 504.
	841	783	6	4-505.
	841	783	7	Effective date.
July 2	849	805	-----	Temporary.
July 3	952	848	1	10-137 note.
	957	848	1	9-201 note, 202.
	962	848	1	7-513.
	963	848	1	7-510, 523.
	970	848	1	7-123 note.
	975	848	1	6-115.
	988	848	1	43-1520.
	989	848	1	43-1511.
	989	848	2-6	Temporary.
	1007	853	-----	8-171.
	1012	859	-----	Special.
Dec. 11	1026	8	-----	7-107 note.
1931				
Jan. 23	1040	43	-----	Special.
Feb. 12	1087	119	1	7-520.
	1088	119	2	7-521 note.
	1088	119	3	Appropriation.
	1088	119	4	7-522 note.
	1089	120	-----	29-238 to 240.
Feb. 14	1109	181	1-3	Special.
Feb. 20	1197	246	1	7-622.
	1197	246	2	7-623.
	1197	246	3	7-624.
	1197	246	4	7-625.
	1198	246	5	7-626.
	1198	246	6	7-627.
	1198	246	7	7-628.
	1198	246	8	7-629.
	1198	246	9	7-608, 630.
	1199	246	10	7-631.
	1199	246	11	7-632.
	1199	246	12	7-633.
	1199	246	13	7-633 note; Repealing.
Feb. 23	1380	282	1	47-118.
	1381	282	1	8-142.
	1395	282	1	31-809.
	1413	282	2-5	Temporary.
Feb. 25	1419	302	-----	44-214.
	1419	303	-----	Special.
Feb. 27	1424	317	1	40-602.
	1424	317	2	40-301 to 303.
	1424	317	3	40-603.
	1424	317	4	40-603.
	1427	317	4	40-605, 609.
	1428	317	4	40-302.
	1429	317	5	40-612.
	1429	317	6	Effective date.
Feb. 28	1455	332	-----	Special.
	1459	344	1, 2	43-1304 note.
Mar. 3	1486	399	1	1-231.
	1486	399	2	1-232.
	1486	399	3	Repealing.
	1486	399	4	1-233.
	1494	411	1	1-815.
	1494	411	2	Effective date.



## STATUTES AT LARGE—Continued

VOLUME 47					VOLUME 47—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1932					1932				
Feb. 2	18	12		6-505 note.	July 1	554	366	(23)	47-2323.
Feb. 11	48	39		14-309.		554	366	(24)	47-2324.
	48	40		1-214.		554	366	(25)	47-2325.
Feb. 18	50	47	1	48-401.		554	366	(26)	47-2326.
	50	47	2	48-402.		554	366	(27)	47-2327.
	51	47	3	48-403.		555	366	(28)	47-2328.
	51	48	1-5	Special.		555	366	(29)	47-2329.
Mar. 17	66	84		Special.		555	366	(30)	47-2330.
Apr. 14	79	98		32-309.		555	366	(31)	47-2331.
	79	99	1-4	43-1304 note.		557	366	(32)	47-2332.
	79	100		43-1530.		557	366	(33)	47-2333.
	81	101		7-107 note.		557	366	(34)	47-2334.
Apr. 16	86	118	1	4-601.		557	366	(35)	47-2335.
	87	118	2	4-603.		557	366	(36)	47-2336.
	87	118	3	4-602.		557	366	(37)	47-2337.
	87	118	4	4-604.		558	366	(38)	47-2338.
Apr. 20	87	121		29-602.		558	366	(39)	47-2339.
Apr. 22	134	131	1	31-106.		558	366	(40)	47-2340.
	134	131	2	31-107.		559	366	(41)	47-2341.
	134	131	3	Repealing.		559	366	(42a)	47-2101.
	135	133	1-5	7-127 note.		560	366	(42b)	47-2102.
May 13	154	180	1	8-114.		561	366	(42c)	47-2103.
	154	180	2	Special.		561	366	(42d)	47-2104.
May 17	154	183	1-3	Special.		561	366	(42e)	47-2105.
	158	189		35-204.		561	366	(42f)	47-2106.
May 20	161	197	1	8-115.		562	366	(42g)	47-2107.
	162	197	2	8-116.		562	366	(42h)	47-2108.
May 21	163	200	1	8-164.		562	366	(42i)	47-2109.
	164	200	2	8-165.		562	366	(43)	47-2342.
	164	200	3	8-166.		562	366	(44)	47-2343.
June 3	168	206	1-4	43-1304 note.		562	366	(45)	47-2344.
June 14	302	247		Special.		563	366	(46)	47-2345.
	303	248	1	7-309.		563	366	(47)	47-2346.
	303	248	2	7-310.		563	366	(48)	47-2347.
	303	248	3	7-311.		563	366	(49)	47-2348.
	304	248	4	7-312.		563	366	(50)	47-2349.
	304	249	1, 2	Special.		563	366	(51)	47-2350.
	304	250	1-4	Special.	July 7	608	441		1-804.
June 15	318, 319	265	1-3	43-1304 note.		609	442		10-119.
	319	265	4	43-1304.		647	462		16-605.
June 17	319	267		7-123 note.	July 8	650	465	1	22-3201.
June 18	322	269	1	7-1216.		650	465	2	22-3202.
	322	269	2	7-1217.		651	465	3	22-3203.
	322	269	3	7-1218.		651	465	4	22-3204.
	323	269	4	7-1219.		651	465	5	22-3205.
	323	269	5	7-1220.		651	465	6	22-3206.
	323	269	6	7-1221.		652	465	7	22-3207.
	323	269	7	7-1222.		652	465	8	22-3208.
	324	269	8	7-1223.		652	465	9	22-3209.
	324	269	9	7-1224.		652	465	10	22-3210.
June 23	326	272	1	26-501.		653	465	11	22-3211.
	326	272	2	26-502.		653	465	12	22-3212.
	326	272	3	26-503.		653	465	13	22-3213.
	327	272	4	26-504.		654	465	14	22-3214.
	327	272	5	26-505.		654	465	15	22-3215.
	327	272	6	26-506.		654	465	16	22-3216.
	328	272	7	26-507.		654	465	17	Repealing.
	328	272	8	26-508.	July 14	659	476	3	2-1403.
	329	272	9	26-509.		659	476	4	2-1405.
	329	272	10	26-510.		660	478	1	22-1624.
	329	272	11	26-511.	July 15	661	478	2	Repealing.
	330	272	12	26-512.		696	492	1	24-201.
	330	272	13	26-513.		697	492	2	24-202.
	331	272	14	26-514.		697	492	3	24-203.
	331	272	15	26-515.		697	492	4	24-204.
	331	272	16	26-516.		698	492	5	24-205.
	331	272	17	26-517.		698	492	6	24-206.
	331	272	18	26-518.		698	492	7	24-207.
June 29	354	308	1	1-814; 7-618 note.		698	492	8	22-2601.
	355	308	1	7-514.		698	492	9	24-208.
	360	308	1	31-609.		699	493	1, 2	Special.
	370	308	1	47-115 note.		699	495	1-4	Special.
	370	308	2-5	Temporary.		707	514	1-6	Special.
June 30	413	314	323	11-1512 note.	July 19	747		1	7-401.
July 1	550	366	(1)	47-2301.		748	4	2	7-402.
	550	366	(2)	47-2302.		748	4	3	7-403.
	551	366	(3)	47-2303.	Dec. 15	749	4	4	7-404.
	551	366	(4)	47-2304.		749	4	5	7-405.
	551	366	(5)	47-2305.		749	4	6	7-406.
	551	366	(6)	47-2306.		749	4	7	7-407.
	551	366	(7)	47-2307.		749	4	8	7-408.
	551	366	(8)	47-2308.		750	4	9	7-409.
	552	366	(9)	47-2309.		750	4	10	7-410.
	552	366	(10)	47-2310.		750	5		40-603.
	552	366	(11)	47-2311.		750	6		R. '38, 52 Stat. 624, ch. 322, § 18.
	552	366	(12)	47-2312.	1933				
	552	366	(13)	47-2313.					
	552	366	(14)	47-2314.					
	552	366	(15)	47-2315.		752	10	1	7-131 note, 604 note.
	553	366	(16)	47-2316.		759	10	1	44-214 note.
	553	366	(17)	47-2317.		759	10	2	Special.
	553	366	(18)	47-2318.		759	10	3	4-112; 7-503, 504, 507, 604, 611.
	553	366	(19)	47-2319.					612; 44-201 note.
	553	366	(20)	47-2320.		760	10	4	44-201.
	553	366	(21)	47-2321.		760	10	5-13	Special.
	553	366	(22)	47-2322.		799	48	1	8-164 to 166.
	554	366				799	48	2	8-167.



## STATUTES AT LARGE—Continued

VOLUME 47—Continued					VOLUME 48—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1933					1934				
Feb. 16	819	94	1, 2	43-503 note.	Jan. 24	336	4	35	25-133.
Feb. 18	858	103		22-2101.		336	4	36	25-134.
Feb. 20	858	106		Special.		337	4	37	25-135.
Feb. 24	904	119	1-3	11-312 note.		337	4	38	25-136.
Feb. 28	1347	130	1	47-901.	Feb. 2	349	8		Temporary.
	1348	130	2	47-902.	Feb. 16	352	14	1, 2	26-104 and note.
	1348	130	3	47-903.	Feb. 20	353	16		Special.
	1348	130	4	47-904.	Mar. 2	389	33	1	4-202, 207, 208; 5-204; 8-101 note; 40-613 note; 43-1304 note; 47-409
	1348	130	5	Obsolete.					26-415, 416.
	1370	138	6	47-905.	Mar. 27	506	96		7-1230.
	1370	139		12-208.		506	97	1	7-1231.
Mar. 1	1419	162		S. 47-1806.		506	97	2	7-1232.
Mar. 3	1482	206		9-105 note.		507	97	3	7-1233.
	1483	206	1	23-601.		507	97	4	7-1234.
	1483	206	2	23-602.		507	97	5	Special.
	1483	206	3	23-603.	Apr. 13	574	111		Temporary.
	1483	206	4	23-604.		574	113		8-117.
	1483	206	5	23-605.		575	114	1	8-118.
	1483	206	6	23-606.		575	114	2	8-119.
	1484	206	7	23-607.		575	114	3	8-120.
	1484	206	8	23-608.	Apr. 16	592	143	4	29-418.
	1485	206	9	23-609.		592	144		35-205.
	1485	206	10	23-610.		593	145	1, 2	Special.
	1485	206	11	23-611.	Apr. 24	608	161		2-1201 to 1205, 2-1207.
	1485	206	12	23-612.	Apr. 30	609	161		2-1206, 1208.
Mar. 4	1546	220		Emergency.		654	181	1	25-111.
	1564	274	1	26-103.		654	181	2	25-123.
	1566	274	2	26-101.		654	181	3	25-124.
	1566	274	3	26-102.		656	181	4	Obsolete.
	1566	274	4	26-104; R. '34, 48 Stat. 352, ch. 14. <sup>1</sup>		656	181	5	Effective Date.
	1567	274	5	26-335.	June 4	831	373	1	35-1001.
	1567	274	6	26-107.		834	373	2	35-1002.
	1567	274	7	26-108.		834	373	3	35-1003.
	1568	274	8	26-109.		835	373	4	35-1004.
	1568	274	9	23-102 note.		835	373	5	35-1005.
VOLUME 48						835	374		Special.
Date	Page	Chapter	Section	D. C. 1940		836	375		8-104.
1933						836	376		47-826.
Apr. 5	25	19	1-16	R. '34, 48 Stat. 336, ch. 4, § 31.		836	377		Special.
	29	19	17	Saving Clause.		837	378	1, 2	Special.
	29	19	18	Effective date.		843	388	1	5-301.
June 15	155	87	5	39-107 note.		843	388	2	5-302.
	156	87	6	39-107 note.		843	388	3	5-303.
	156	87	7	39-401.		844	388	4	5-304.
	156	87	8	39-402.		844	388	5	5-305.
	157	87	10	39-403.		844	388	6	5-306.
June 16	229	93	1	7-524.		844	388	7	5-307.
	230	93	1	7-603 note.		845	388	8	5-308.
	232	93	1	6-505 note.		845	388	9	5-309.
	236	93	1	31-609.		845	388	10	5-310.
	243	93	1	47-115 note.		846	388	11	5-311.
	251	93	2-8	Temporary.		846	388	12	5-312.
1934						846	388	13	Repealing.
Jan. 24	319	4	1	25-101.	846-878	389	1-8	Appropriation.	
	319	4	2	25-102.	June 5	880	391		24-209.
	319	4	3	25-103.	June 7	926	426		11-101, 201 note.
	321	4	4	25-104.	June 11	928	444	1-7	Special.
	322	4	5	25-105.	June 12	930	465	1	5-103.
	322	4	6	25-106.		931	465	2	5-104.
	322	4	7	25-107.		931	465	3	5-105.
	323	4	8	25-108.		932	465	4	5-106.
	323	4	9	25-109.		932	465	5	5-107.
	324	4	10	25-110.		933	465	6	5-108.
	324	4	11	25-111.		933	465	7	5-109.
	327	4	12	25-113.		933	465	8	5-110.
	327	4	13	25-114.		933	465	9	Repealing.
	327	4	14	25-115.		933	465	10	5-111.
	329	4	15	25-116.	June 13	948	483	1, 2	49-107.
	330	4	16	25-117.		953	493		47-828.
	330	4	17	25-118.	June 15	963	536		22-1701.
	330	4	18	25-119.		967	541		Temporary.
	331	4	19	25-120.	June 16	972	547		47-827.
	331	4	20	25-121.		974	552		25-116.
	331	4	21	25-122.	June 18	997	588		25-111.
	332	4	22	25-123.		1014,	600	1, 2	25-124.
	332	4	23	25-124.		1015			31-1114.
	332	4	24	Obsolete.	June 19	1125	671	Ch. I 1	35-301.
	333	4	25	25-125.		1127	672	2	35-302.
	333	4	26	25-126.		1128	672	3	35-401.
	333	4	27	25-127.		1129	672	2	35-402.
	333	4	28	25-128.		1130	672	3	S. 47-1806.
	334	4	29	25-129.		1131	672	4	35-403.
	335	4	30	25-130.		1131	672	5	35-404.
	336	4	31	25-131.		1131	672	6	35-405.
	336	4	32	Obsolete.		1132	672	7	35-406.
	336	4	33	25-132.		1132	672	8	35-407.
	336	4	34	25-132 note; Repealing.		1132	672	9	35-408.
						1132	672	10	35-409.
						1133	672	11	35-410.
						1133	672	12	35-411.
						1133	672	13	35-412.
						1133	672	14	35-413.
						1133	672	15	35-414.

<sup>1</sup>Repealed in part.



## STATUTES AT LARGE—Continued

VOLUME 48—Continued					VOLUME 49				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1934					1935				
June 19..	1133	672	Ch. II 16	35-415.	Feb. 18....	26	10	1-4	43-1304 note.
	1134	672		17 35-416.	Mar. 4....	34	19	1-11	Temporary.
	1134	672		18 35-417.		37	23		22-3102.
	1135	672		19 35-418.	Mar. 6....	39	28	-----	18-708.
	1135	672		20 35-419.		39	28	1	18-712.
	1137	672		21 35-420.		39	28	2	18-101.
	1137	672		22 35-421.		39	28	3 (A)	Repealing.
	1137	672		23 35-422.		40	28	3 (B)	18-104.
	1137	672		24 35-423.		40	28	5	18-105.
	1138	672		25 35-424.	Apr. 5....	105	41	1	5-501.
	1139	672		26 35-425.		106	41	2	5-502.
	1140	672		27 35-426.		106	41	3	5-503.
	1140	672		28 35-427.		107	41	4	5-504.
	1141	672		29 35-428.		107	41	5	5-505.
	1142	672		30 35-429.		108	41	6	Repealing.
	1142	672		31 35-430.		108	42	-----	5-607.
	1142	672		32 35-431.		109	42	-----	5-614.
	1142	672		33 35-432.		110	42	-----	5-615.
	1143	672	Ch. III	1 35-501.	Apr. 8....	110	43	-----	Special.
	1144	672		2 35-502.		111	46	1	20-701.
	1144	672		3 35-503.		111	46	2	20-702.
	1145	672		4 35-504.		111	46	3	20-703.
	1145	672		5 35-505.		112	46	4	20-704.
	1145	672		6 35-506.		112	46	5	20-705.
	1145	672		7 35-507.		112	46	6	20-706.
	1145	672		8 35-508.		112	46	7	20-707.
	1145	672		9 35-509.		112	46	8	20-708.
	1146	672		10 35-510.		112	46	9	20-709.
	1146	672		11 35-511.		113	46	10	20-710.
	1146	672		12 35-512.		113	46	11	20-711.
	1147	672		13 35-513.		113	46	12	20-712.
	1147	672		14 35-514.		113	46	13	20-713.
	1147	672		15 35-515.		113	46	14	20-714.
	1148	672		16 35-516.		113	46	15	20-715.
	1148	672		17 35-517.		113	47	1-8	Special.
	1148	672		18 35-518.	Apr. 11...	152	57	1	16-612.
	1149	672		19 35-519.		152	57	2	16-613.
	1149	672		20 35-520.		153	57	3	16-614.
	1149	672		21 35-521.		153	57	4	16-615.
	1150	672		22 35-522.		153	57	5	16-616.
	1150	672		23 35-523.		153	57	6	7-208; 16-617 note.
	1150	672		24 35-524.		154	57	7	16-617.
	1150	672		25 35-525.		154	57	8	16-618.
	1150	672		26 35-526.	Apr. 24....	161	79	-----	Temporary.
	1150	672		27 35-527.	Apr. 25....	162	84	1-4	43-1304 note.
	1151	672		28 35-528.		163			
	1151	672		29 35-529.	May 3....	166	89	1	40-401.
	1151	672		30 35-530.		166	89	2	40-402.
	1151	672		31 35-531.		167	89	3	40-403.
	1152	672		32 35-532.		169	89	4	40-404.
	1152	672		33 35-533.		170	89	5	40-405.
	1152	672		34 35-534.		170	89	6	40-406.
	1152	672		35 35-535.		171	89	7	40-407.
	1152	672		36 35-536.		171	89	8	40-408.
	1154	672		37 35-537.		171	89	9	40-409.
	1154	672		38 35-538.		171	89	10	40-410.
	1154	672		39 35-539.		172	89	11	40-411.
	1154	672		40 35-540.		172	89	12	40-412.
	1154	672	Ch. IV 1	35-601.		173	89	13	40-413.
	1155	672		2 35-602.		174	89	14	40-414.
	1156	672	Ch. V 1	35-701.		174	89	15	40-415.
	1157	672		2 35-702.		174	89	16	40-416.
	1158	672		3 35-703.		174	89	17	Effective date.
	1161	672		4 35-704.	May 6....	174	91	1	9-204.
	1161	672		5 35-705.		175	91	2	9-206.
	1164	672		6 35-706.	May 10....	217	103	-----	Temporary.
	1164	672		7 35-707.	May 28....	304	154	-----	4-302.
	1164	672		8 35-708.	June 4....	320	167	-----	31-622.
	1164	672		9 35-709.	June 5....	325	178	-----	Special.
	1164	672		10 35-710.	June 14....	349	241	-----	7-520.
	1165	672		11 35-711.		358	241	1	4-502.
	1166	672		12 35-712.		372	241	2-7	Temporary.
	1173	672		13 35-713.	June 17....	384	265	-----	45-708.
	1174	672		14 35-714.		385	266	-----	40-606 to 608.
	1174	672		15 35-715.	June 19....	391	277	2	39-107 note.
	1175	672		16 35-716.		391	277	3	39-402.
	1175	672	16a	35-717.	June 24....	394	286	-----	31-1012.
	1176	672		17 35-718.	June 26....	424	316	-----	Special.
	1176	672		18 35-719.	June 28....	430	331	1, 2	7-634.
	1176	672		19 35-720.		430	332	1	1-102 note, 213; Repealing.
	1176	672		20 35-721.		431	332	2	1-602.
	1176	672	Ch. VI 1	35-801.		431	332	3	1-604.
	1176	672		2 35-802.		431	332	4, 5	Repealing.
	1177	672		3 35-803.	July 2....	443	357	-----	Special.
	1177	672		4 Repealing.		444	359	-----	25-111.
	1177	672		5 Effective date.	July 18....	482	387	1-7	Special.
June 25..	1215	743		1 9-204.	July 25....	497	415	1	43-1304 note; 44-104.
	1215	743		2 9-205.		498	415	2	43-1304 note; 44-105.
	1215	743		3 9-206.		498	415	3	43-1304 note; 44-106.
	1216	743		4 9-207.		498	415	4	43-1304 note; 44-107.
June 26..	1230	756		13 47-108.	Aug. 6....	537	449	1	7-1225.
	1230	756		14 47-109.		537	449	2	7-1226.
	1233	756		20 47-110.		537	449	3	7-1227.
	1243	763	1-3	Special.		537	449	4	7-1228.
						537	449	5	7-1229.



VOLUME 49—Continued				
Date	Page	Chapter	Section	D. C. 1940
1935				
Aug. 7....	539	453	1	16-403.
	539	453	2	16-401.
	540	453	3	16-409.
	540	453	4	16-421.
Aug. 9....	567	500	-----	4-409.
	568	501	-----	4-132.
	568	502	1-3	7-502 note.
Aug. 13....	614	522	-----	Temporary.
Aug. 15....	651	546	1	22-2701.
	651	546	2	22-2702.
	651	546	3	22-2703.
	651	546	4	Repealing.
	653	549	1	6-801.
	653	549	2	6-802.
	654	549	3	6-803.
	654	549	4	6-804.
	654	549	5	Repealing.
Aug. 17....	656	557	1-13	Special.
Aug. 22....	681	604	-----	11-617.
	682	605	-----	11-1420.
Aug. 23....	720	614	337	23-105, 106.
Aug. 24....	744	639	1	46-101.
	744	639	2	46-102.
	744	639	3	46-103.
	745	639	4	46-104.
	745	639	5	46-105.
	745	639	6	46-106.
	746	639	7	46-107.
	746	639	8	46-108.
	746	639	9	46-109.
	746	639	10	46-110.
	746	639	11	46-111.
	746	639	12	46-112.
	747	639	13	46-113.
	747	639	14	46-114.
	747	639	15	46-115.
	747	639	16	46-116.
	747	640	1	46-201.
	748	640	2	46-202.
	748	640	3	46-203.
	748	640	4	46-204.
	748	640	5	46-205.
	748	640	6	46-206.
	749	640	7	46-207.
	749	640	8	46-208.
	749	640	9	46-209.
	749	640	10	46-210.
	749	640	11	46-211.
	749	640	12	46-212.
	750	640	13	46-213.
	750	640	14	46-214.
	750	640	15	46-215.
	750	640	16	Effective date.
Aug. 27....	798	647	-----	Special.
	872	740	-----	Repealing.
	861	741	1	8-121.
	881	741	2	8-122.
	882	741	3	8-123.
	882	742	1	43-704.
	882	742	2	43-705.
	883	742	2	43-706.
	884	742	2	43-707 to 710.
	884	742	3	43-412.
	885	742	4	43-711.
	885	742	5	43-711 note.
895, 896	753	1-4	-----	43-1304 note.
897	756	1	-----	25-103.
897	756	2	-----	25-106.
898, 899	756	3-7	-----	25-111.
900	756	8	-----	25-114.
900	756	9	-----	25-118.
901	756	10	-----	25-121.
901	756	11	-----	25-124.
901	756	12	-----	25-125.
901, 902	756	13, 14	-----	25-128.
	902	15	-----	25-119.
	903	16	-----	25-120.
	903	17	-----	25-124.
	903	18	-----	25-112.
Aug. 28....	946	794	1	46-301.
	947	794	2	46-302.
	947	794	3	46-303.
	948	794	4	46-304.
	949	794	5	Temporary.
	949	794	6	46-305.
	949	794	7	46-306.
	949	794	8	46-307.
	950	794	9	46-308.
	950	794	10	46-309.
	951	794	11	46-310.
	951	794	12	46-311.
	953	794	13	46-312.
	953	794	14	46-313.
	954	794	15	46-314.
	954	794	16	46-315.

VOLUME 49—Continued				
Date	Page	Chapter	Section	D. C. 1940
1935				
Aug. 28....	954	794	17	46-316.
	955	794	18	46-317.
	955	794	19	46-318.
	956	794	20	46-319.
	956	794	21	46-320.
	956	794	22	46-321.
	956	794	23	46-322.
	956	794	24	46-323.
	956	794	25	46-324.
1936				
Jan. 20....	1095	12	-----	27-123.
Feb. 12....	1137	64	-----	Special.
Feb. 13....	1138	68	-----	46-301.
Feb. 26....	1143	87	-----	22-704.
Mar. 2....	1153	111	1	47-1011.
	1154	111	2	47-1012.
	1154	111	3	47-1013.
	1155	111	4	47-1014.
	1155	111	5	Repealing.
Mar. 3....	1158	121	1	4-159.
	1158	121	2	4-160.
Mar. 30....	1186	162	-----	Temporary.
Apr. 10....	1194	175	1	31-611.
	1194	175	2	31-612.
	1194	175	3	31-613.
	1194	175	4	31-614.
	1194	175	5	31-615.
	1194	175	6	Effective date.
Apr. 21....	1236	243	1-3	Temporary.
May 11....	1268	377	1-4	Special.
May 15....	1273	393	-----	40-302.
June 3....	1397	483	1, 2	Special.
June 5....	1485	532	1, 2	Special.
June 20....	1541	620	1-4	43-1304 note.
	1543	625	-----	Special.
	1566	645	-----	Special.
	1568	648	-----	Special.
June 22....	1824	711	1, 2	Special.
June 23....	1880	726	1	32-313.
	1886	726	2-8	Temporary
	1888	726	9	46-301.
	1895	737	-----	Special.
June 24....	1898	743	-----	26-303.
	1901	749	-----	40-605.
June 25....	1917	802	1	1-701.
	1917	802	2	1-702.
	1917	802	3	1-703.
	1917	802	4	1-705.
	1917	802	5	1-706.
	1917	802	6	1-707.
	1917	802	7	1-708.
	1917	802	8	1-709.
	1917	802	9	1-710.
	1917	802	10	1-711.
	1917	802	11	1-712.
	1917	802	12	1-713.
	1917	802	13	1-714.
	1917	802	14	1-715.
	1917	802	15	1-716.
	1917	802	16	1-717.
	1917	802	17	1-718.
	1921	804	-----	7-405; 11-101, 205 note; 20-219 note, 401 note, 701; 37-101 note.

VOLUME 50				
Date	Page	Chapter	Section	D. C. 1940
1937				
Mar. 17....	29	43	1	28-1101.
	30	43	2	28-1102.
	30	43	3	28-1103.
	30	43	4	28-1104.
	30	43	5	28-1105.
	30	43	6	28-1106.
	31	43	7	28-1107.
	31	43	8	28-1108.
	31	43	9	28-1109.
	32	43	10	28-1110.
	32	43	11	28-1111.
	32	43	12	28-1112.
	32	43	13	28-1113.
	32	43	14	28-1114.
	32	43	15	28-1115.
	33	43	16	28-1116.
	33	43	17	28-1201.
	33	43	18	28-1202.
	33	43	19	28-1203.
	34	43	20	28-1204.



VOLUME 50—Continued					
Date	Page	Chapter	Section	D. C. 1940	
1937					
Mar. 17...	35	43	21	28-1205.	
	35	43	22	28-1206.	
	35	43	23	28-1207.	
	36	43	24	28-1208.	
	36	43	25	28-1209.	
	36	43	26	28-1210.	
	36	43	27	28-1211.	
	36	43	28	28-1212.	
	36	43	29	28-1213.	
	37	43	30	28-1214.	
	37	43	31	28-1215.	
	37	43	32	28-1216.	
	37	43	33	28-1217.	
	37	43	34	28-1218.	
	37	43	35	28-1219.	
	38	43	36	28-1220.	
	38	43	37	28-1221.	
	38	43	38	28-1222.	
	38	43	39	28-1223.	
	38	43	40	28-1224.	
	38	43	41	28-1301.	
	38	43	42	28-1302.	
	39	43	43	28-1303.	
	39	43	44	28-1304.	
	39	43	45	28-1305.	
	40	43	46	28-1306.	
	40	43	47	28-1307.	
	40	43	48	28-1308.	
	40	43	49	28-1309.	
	40	43	50	28-1310.	
	41	43	51	28-1311.	
	41	43	52	28-1401.	
	41	43	53	28-1402.	
	41	43	54	28-1403.	
	41	43	55	28-1404.	
	42	43	56	28-1405.	
	42	43	57	28-1406.	
	42	43	58	28-1407.	
	42	43	59	28-1408.	
	43	43	60	28-1409.	
	43	43	61	28-1410.	
	44	43	62	28-1411.	
	44	43	63	28-1501.	
	44	43	64	28-1502.	
	45	43	65	28-1503.	
	45	43	66	28-1504.	
	45	43	67	28-1505.	
	45	43	68	28-1506.	
	45	43	69	28-1507.	
	46	43	70	28-1508.	
	46	43	71	28-1601.	
	46	43	72	28-1602.	
	46	43	73	28-1603.	
	46	43	74	28-1604.	
	46	43	75	28-1605.	
	47	43	76	28-1606.	
	48	43	76a	28-1607.	
	48	43	77	28-1608 note.	
	48	43	78	Effective date.	
	48	43	79	28-1608.	
Mar. 24...	53	50	6	Special.	
Mar. 29...	56	60		Special.	
Apr. 14...	63	77		47-2321.	
Apr. 17...	69	110		31-506.	
Apr. 27...	95	136		9-103.	
	120	144	1	6-201.	
	120	144	2	6-202.	
	120	144	3	6-203.	
	120	144	4	6-204.	
May 28...	211	273		Repealing.	
June 15...	260	353	1,2	Special.	
June 29...	376	403	1	6-117.	
	392	403	2-9	Temporary.	
Aug. 11...	620	579		2-120.	
Aug. 12...	626	596	1	30-103.	
	626	596	2	30-109.	
	626	596	3	Effective date.	
	626	597	1	22-3409.	
	626	597	2	22-3410.	
	626	597	3	22-3411.	
	626	597	4	22-3412.	
	628	599	(826)	22-2201.	
	628	599	(827)	22-2202.	
	628	599	(842)	22-1301.	
	629	599	(847)	22-3108.	
	629	599	(848)	22-403.	
	629	599	(851a)	22-1207.	
	629	599	(851b)	22-2203.	
Aug. 16...	662	660	1	22-1407.	
	663	660	2	22-1408.	
	663	660	3	22-1409.	
	663	661	1,2	Special.	

VOLUME 50—Continued					
Date	Page	Chapter	Title	Section	D. C. 1940
1937					
Aug. 17....	673	690	I	1	47-1401.
	673	690	I	2	47-1402.
	674	690	I	3	47-1403.
	674	690	I	4	47-1404.
	674	690	I	5	47-1405.
	674	690	I	6	47-1406.
	675	690	I	7	47-1407.
	675	690	I	8	47-1408.
	675	690	I	9	47-1409.
	675	690	II	1	47-1801.
	675	690	II	2	47-1802.
	675	690	II	3	47-1803.
	675	690	II	4	47-1804.
	676	690	II	5	47-1805.
	676	690	II	6	47-1806.
	676	690	II	7	47-1807.
	676	690	II	8	47-1808.
	676	690	II	9	Repealing.
	676	690	III	1	47-1901.
	677	690	III	2	47-1902.
	678	690	III	3	47-1903.
	676	690	III	4	47-1905.
	676	690	III	5	47-1907.
	679	690	III	6	47-1908.
	679	690	III	7	47-1911.
	679	690	III	8	Effective date.
	679	690	IV	1	40-101.
	680	690	IV	2	40-102.
	681	690	IV	3	40-103.
	682	690	IV	4	40-104.
	682	690	IV	5	40-105.
	683	690	IV	6	Repealing.
	683	690	IV	7	40-105 note.
	683	690	V	1	47-1601.
	683	690	V	2	47-1602.
	684	690	V	3	47-1603.
	684	690	V	4	47-1604.
	683	690	V	5	47-1605.
	685	690	V	6	47-1616.
	685	690	V	7	47-1606.
	683	690	V	8	47-1617.
	685	690	V	9	47-1618.
	686	690	V	10	47-1607.
	683	690	V	11	47-1619.
	683	690	V	12	47-1620.
	686	690	V	13	47-1621.
	683	690	V	14	47-1622.
	683	690	V	15	47-1623.
	687	690	V	16	47-1624.
	683	690	V	17	47-1628.
	683	690	V	18	47-1608.
	683	690	V	19	47-1609.
	683	690	V	20	47-1610.
	683	690	V	21	47-1611.
	683	690	V	22	47-1613.
	683	690	V	23	47-1614.
	688	690	V	24	47-1615.
	688	690	V	25	Effective date.
	688	690	VI	1-16	Temporary.
	692	690	VII	1	Temporary.
	692	690	VII	2	47-2501.
	693	690	VII	3	Temporary.
	693	690	VII	4	47-2502.
	693	690	VII	5	47-2503.

Date	Page	Chapter	Section	D. C. 1940
1937				
Aug. 19...	697	700	1-9	Special.
Aug. 24...	751	753	1	40-403, 409.
	751	753	2	40-404.
Aug. 25...	787	760	1	45-1401.
	787	760	2	45-1402.
	788	760	3	45-1403.
	789	760	4	45-1404.
	789	760	5	45-1405.
	791	760	6	45-1406.
	791	760	7	45-1407.
	793	760	8	45-1408.
	794	760	9	45-1409.
	795	760	10	45-1410.
	796	760	11	45-1411.
	796	760	12	45-1412.
	796	760	13	45-1413.
	796	760	14	45-1414.
	796	760	15	45-1415.
	797	760	16	45-1416.
	798	760	17	45-1418.
	798	760	18	Repealing.
	798	760	19	Effective date.



VOLUME 50—Continued				
Date	Page	Chapter	Section	D. C. 1940
1937				
Aug. 25	802, 803	766	1, 2	25-115.
	803	766	3	25-118.
	803	766	4	25-137.
	806	774	1	16-201.
	807	774	2	16-202.
	807	774	3	16-203.
	807	774	4	16-204.
	808	774	5	16-205.
	808	774	6	16-206.
	808	774	7	16-207.

VOLUME 52				
Date	Page	Chapter	Section	D. C. 1940
1938				
Feb. 3	26	13	12	35-535.
Feb. 15	30	29	1	22-1115.
	30	29	2	22-1116.
Feb. 18	78	31	1	40-201.
	78	31	2	40-202.
	78	31	3	40-203.
	78	31	4	40-204.
	78	31	5	40-205.
	78	31	6	40-206.
	78	31	7	40-207.
Feb. 24	81	35	-----	47-830.
Mar. 5	103	43	1	11-801.
	103	43	2	11-802.
	103	43	3	11-803.
	103	43	4	11-804.
	103	43	5	11-805.
	105	43	6	11-806.
	105	43	7	11-807.
	105	43	8	11-808.
	105	43	9	11-809.
	106	43	10	11-810.
	106	43	11	11-811.
	106	43	12	11-812.
	106	43	13	11-813.
	106	43	14	11-814.
	106	43	15	11-815.
	106	43	16	11-816.
	106	43	17	11-817.
	107	43	18	11-818.
	107	43	19	11-819.
	107	43	20	11-819 note.
	107	43	21	11-820.
	107	43	22	Effective date.
Apr. 2	153	60	-----	6-108.
Apr. 4	170	62	1	31-609.
	190-192	62	2-10	Temporary.
Apr. 5	198	72	11	40-616.
	198	72	1	22-1501.
	198	72	2	22-1502.
	199	72	3	23-301.
	199	72	4	23-304.
	199	72	5	23-305.
Apr. 27	265	180	1	11-210, 331; 47-201 note
May 13	351	212	-----	Special.
May 16	356	223	1(a)	47-1401.
	357	223	1(b)	47-1408.
	357	223	1(c)	47-1410 to 1412.
	358	223	2	47-1806.
	358	223	3	47-1902.
	359	223	4(a)	40-102.
	359	223	4(b)	40-103.
	360	223	5(a)	47-1601.
	361	223	5(b)	47-1603.
	361	223	5(c)	47-1606.
	361	223	5(d)	47-1607.
	362	223	5(e)	47-1621.
	362	223	5(f)	47-1624.
	363	223	5(g)	47-1612, 1625.
	363	223	5(h)	Effective date.
	369	223	6(a)	47-1701 note.
	369	223	6(b)	Temporary.
	369	223	7(1)	Temporary.
	369	223	7(2)	47-2501.
	370	223	7(3)	47-2502.
	370	223	7(4)	47-2503.
	370	223	7(5)	47-2504.
	370	223	7(6)	Temporary.
	370	223	8(1)	47-2401.
	370	223	8(2)	47-2402.
	371	223	8(3)	47-2403.
	371	223	8(4)	47-2404.
	372	223	8(5a)	47-708, 709.
	373	223	8(5a)	47-2405.
	373	223	8(5b)	47-710.
	373	223	8(5c)	47-711.
	373	223	8(5d)	47-712.
	374	223	8(5e)	47-716.

VOLUME 52—Continued				
Date	Page	Chapter	Section	D. C. 1940
1938				
May 16	374	223	8(6)	47-2406.
	374	223	8(7)	47-2407.
	374	223	8(8)	47-2408.
	375	223	8(9)	47-2409.
	375	223	8(10)	47-2410.
	375	223	8(11)	47-2411.
	375	223	8(12)	Repealing.
	375	223	8(tit. X)	47-201, 204, 502.
	376	223	8(tit. XI)	25-138.
May 31	584	290	2	11-201.
	584	290	5	11-301.
June 1	596	309	(1)	11-902.
	596	309	(2)	11-903.
	596	309	(3)	11-904.
	596	309	(4)	11-905.
	596	309	(5)	11-906.
	596	309	(6)	11-907.
	597	309	(7)	11-908.
	598	309	(8)	11-909.
	598	309	(9)	11-910.
	598	309	(10)	11-911.
	598	309	(11)	11-912.
	599	309	(12)	11-913.
	599	309	(13)	11-914.
	599	309	(14)	11-915.
	600	309	(15)	11-916.
	601	309	(16)	11-917.
	601	309	(17)	11-918.
	601	309	(18)	11-919.
	601	309	(19)	11-920.
	601	309	(20)	11-921.
	602	309	(21)	11-922.
	602	309	(22)	11-923.
	602	309	(23)	11-924.
	602	309	(24)	11-925.
	602	309	(25)	11-926.
	602	309	(26)	11-927.
	603	309	(27)	11-928.
	603	309	(28)	11-929.
	603	309	(29)	11-930.
	603	309	(30)	11-931.
	603	309	(31)	11-932.
	603	309	(32)	11-933.
	603	309	(33)	11-934.
	604	309	(34)	11-935.
	604	309	(35)	11-936.
	604	309	(36)	11-937.
	604	309	(37)	11-938.
	604	309	(39)	11-939.
	605	309	(40)	11-940.
	605	309	(41)	11-941.
	605	309	(42)	11-942.
	605	309	(43)	11-901 note.
	605	309	(44)	Repealing.
June 7	611	321	1	2-1301.
	612	321	2	2-1302.
	613	321	3	2-1303.
	613	321	4	2-1304.
	613	321	5	2-1305.
	613	321	6	2-1306.
	614	321	7	2-1307.
	614	321	8	2-1308.
	614	321	9	2-1309.
	614	321	10	2-1310.
	615	321	11	2-1311.
	615	321	12	2-1312.
	615	321	13	2-1313.
	616	321	14	2-1314.
	616	321	15	2-1315.
	616	321	16	2-1316.
	617	321	17	2-1317.
	617	321	18	2-1318.
	617	321	19	2-1319.
	618	321	20	2-1320.
	618	321	21	2-1321.
	618	321	22	2-1322.
	618	321	23	2-1323.
	619	321	24	2-1324.
	619	321	25	2-1325.
	619	321	26	2-1326.
	619	321	27	2-1327.
	620	321	28	2-1328.
	620	321	29	Repealing.
	620	322	1	2-1101.
	620	322	2	2-1102.
	620	322	3	2-1103.
	621	322	4	2-1104.
	621	322	5	2-1105.
	621	322	6	2-1106.
	621	322	7	2-1107.
	622	322	8	2-1108.
	622	322	9	2-1109.
	622	322	10	2-1110.
	622	322	11	2-1111.
	622	322	12	2-1112.
	622	322	13	2-1113.
	623	322	14	2-1114.



## STATUTES AT LARGE—Continued

## VOLUME 52—Continued

Date	Page	Chapter	Section	D. C. 1940
1938				
June 7...	623	322	15	2-1114 note.
	623	322	16	2-1115.
	624	322	17	2-1116.
	624	322	18	2-1117.
	624	322	19	2-1118.
June 8...	624	323	-----	47-1701 note
	625	326	1	S. 21-310. ✓
	625	326	2	21-308.
	627	326	3	S. 21-311.
	627	326	4	S. 21-311.
	628	326	5	S. 21-311.
	628	326	6	S. 21-316.
	628	326	7	S. 21-312, 313.
	629	326	8	S. 21-314.
	629	326	9	S. 21-315.
	629	326	10	S. 21-317.
	630	326	11	S. 21-318.
	630	326	12	S. 21-320.
	631	326	13	S. 21-321.
	631	326	14	S. 21-322.
	631	326	15	S. 21-324.
	631	326	16	Repealing.
	631	326	17	Severability.
June 10...	639	333	1-6	Special.
June 11...	641	339	-----	7-107 note.
	641	340	1, 2	7-107 note.
June 14...	683	381	-----	Special.
June 15...	684	384	-----	Special.
	689	392	-----	36-502.
	691	395	-----	2-1209.
	691	396	1, 2	25-111.
	691	396	3	25-115.
June 16...	709	461	1	47-815.
	709	461	2	47-816.
	755	470	-----	Special.
	758	474	-----	36-403.
June 20...	780	527	-----	26-317, 331.
	785	532	1	33-401.
	787	532	2	33-402.
	787	532	3	33-403.
	787	532	4	33-404.
	787	532	5	33-405.
	788	532	6	33-406.
	789	532	7	33-407.
	789	532	8	33-408.
	790	532	9	33-409.
	790	532	10	33-410.
	791	532	11	33-411.
	792	532	12	33-412.
	792	532	13	33-413.
	792	532	14	33-414.
	794	532	15	33-415.
	794	532	16	33-416.
	794	532	17	33-417.
	795	532	18	33-418.
	795	532	19	33-419.
	795	532	20	33-420.
	796	532	21	33-421.
	796	532	22	33-422.
	796	532	23	33-423.
	796	532	24	33-424.
	796	532	25	33-425.
	796	532	26	Repealing.
	796	532	27	Title of act.
	797	534	1	5-413.
	797	534	2	5-414.
	798	534	3	5-415.
	798	534	4	5-416.
	798	534	5	5-417.
	798	534	6	5-418.
	798	534	7	5-419.
	799	534	8	5-420.
	800	534	9	5-421.
	800	534	10	5-422.
	801	534	11	5-423.
	801	534	12	5-424.
	801	534	13	5-425.
	802	534	14	5-426.
	802	534	15	5-427.
	802	534	16	5-428.
	802	534	17	5-428 note.
June 22...	943	595	1-3	Special.
June 25...	1112	680	14	46-301.
	1125	681	1	5-316 note; 11-210 note; 47-201, 204
	1186	691	1	5-103.
	1187	691	2-4	5-105.
	1188			
	1188	691	5	5-112 to 115
	1189	691	5	5-116.
	1198	702	1	47-1101.
	1199	702	2	47-1102.
	1199	702	3	47-1103.
	1200	702	4	47-1104.
	1200	702	5	47-1105.
	1201	702	6	47-1106.
	1201	702	7	47-307.

## VOLUME 52—Continued

Date	Page	Chapter	Section	D. C. 1940
1938				
June 25...	1201	702	8	47-1009.
	1201.	702	9 (a)-(c)	47-1003.
	1202			
	1202	702	9 (d)	47-1004.
	1202	702	10	47-308.
	1202	702	11	47-603, 1010.
	1203	704	1	9-208.
	1204	704	2	9-209.
	1204	704	3	9-210.
	1204	704	4	9-211.
	1204	704	5	9-212.
June 29...	1226	796	1, 2	Special.
	1233	809	-----	44-301.

## VOLUME 53

Date	Page	Chapter	Section	D. C. 1940
1939				
Mar. 6...	511	7	-----	7-707.
Mar. 7...	512	8	-----	7-506.
Apr. 5...	566	37	1	28-1004.
	566	37	2	26-203.
	566	37	3	28-1008.
	567	37	4	26-204.
	567	37	5	26-110.
	567	37	6	28-1009.
	567	37	7	28-1010.
	567	37	8 (a)	16-312.
	567	37	8 (b)	15-305.
	568	38	-----	43-603.
	568	39	1-5	31-623.
	569	39	6	Effective date.
	569	40	1	43-907.
	569	40	2	43-908.
	570	41	-----	47-2331, 2333.
	571	42	1	31-710.
	571	42	2	31-711.
	571	43	-----	31-628.
Apr. 26...	622	97	1-3	Special.
May 10...	737	119	1	32-403.
June 20...	844	225	-----	7-324.
	844	226	-----	16-201.
	849	228	1, 2	Special.
	849	229	-----	7-1216.
	850	230	1, 2	Special.
	850	231	-----	40-301.
June 21...	852	236	-----	9-104.
June 29...	903	248	-----	11-210, 331.
June 30...	990	255	1	38-301.
	990	255	2	38-302.
	990	255	3	38-303.
	991	255	4	38-304.
	991	255	5	38-305.
July 15...	1007	281	1	21-309.
	1009	281	1	11-1519; 40-503 note.
	1010	281	1	40-504; 44-213 note.
	1014	281	1	31-616, 624.
	1015	281	1	31-1115.
	1016	281	1	31-1107.
	1017	281	1	31-609.
	1021.	281	1	Appropriation.
	1022			
	1023	281	1	47-116 note.
	1024	281	1	47-115 note.
	1026	281	1	47-117 note.
	1033	281	1	40-604.
	1037	281	1	7-603 note.
	1039	281	2-10	Appropriation.
July 17...	1045	313	1	40-102.
	1046	313	2	40-103.
	1046	313	3	47-2331, 2333.
	1046	313	4	Repealing.
July 18...	1060	322	1	26-405.
	1060	322	2	26-405 note.

Date	Page	Chapter	Title	Section	D. C. 1940
1939					
July 26...	1085	367	I	-----	47-134.
	1087	367	II	1	47-1501.
	1087	367	II	2	47-1502.
	1088	367	II	3	47-1503.
	1088	367	II	4	47-1504.
	1089	367	II	5	47-1505.
	1091	367	II	6	47-1506.
	1091	367	II	7	47-1507.
	1091	367	II	8	47-1508.
	1092	367	II	9	47-1509.
	1092	367	II	10	47-1510.



PARALLEL REFERENCE TABLES  
STATUTES AT LARGE—Continued

VOLUME 53—Continued					
Date	Page	Chapter	Title	Section	D. C. 1940
1939					
July 26.....	1092	367	II	11	47-1511.
	1093	367	II	12	47-1512.
	1093	367	II	13	47-1513.
	1094	367	II	14	47-1514.
	1094	367	II	15	47-1515.
	1095	367	II	16	47-1516.
	1095	367	II	17	47-1517.
	1095	367	II	18	47-1518.
	1095	367	II	19	47-1519.
	1095	367	II	20	47-1520.
	1096	367	II	21	47-1521.
	1096	367	II	22	47-1522.
	1096	367	II	23	47-1523.
	1097	367	II	24	47-1524.
	1099	367	II	25	47-1525.
	1099	367	II	26	47-1526.
	1100	367	II	27	47-1527.
	1100	367	II	28	47-1528.
	1100	367	II	29	47-1529.
	1101	367	II	30	47-1530.
	1101	367	II	31	47-1531.
	1102	367	II	32	47-1532.
	1102	367	II	33	47-1533.
	1103	367	II	34	47-1534.
	1103	367	II	35	47-1535.
	1103	367	II	36	47-1536.
	1104	367	II	37	47-1537.
	1104	367	II	38	47-1538.
	1104	367	II	39	47-1539.
	1104	367	II	40	47-1540.
	1105	367	II	41	47-1541.
	1105	367	II	42	47-1542.
	1106	367	II	43	47-1543.
	1107	367	III	-----	11-330.
	1107	367	IV	1	47-1201 note.
	1107	367	IV	2 (a)	47-1701.
	1108	367	IV	2 (a)	47-1701 note.
	1108	367	IV	2 (b)	47-1701 note.
	1108	367	IV	2 (c)	Repealing.
	1108	367	IV	3	47-501 note.
	1108	367	IV	4	47-1211.
	1108	367	IV	5 (a)	47-2402.
	1108	367	IV	5 (b)	47-2403.
	1109	367	IV	5 (b)	47-2405.
	1109	367	IV	5 (b)	47-708.
	1109	367	IV	5 (b)	47-709.
	1109	367	IV	5 (b)	47-710.
	1109	367	IV	5 (b)	47-711.
	1110	367	IV	5 (c)	47-2412.
	1110	367	IV	6	47-1204.
	1111	367	V	(I, 1)	47-1601.
	1112	367	V	(I, 2)	47-1602.
	1113	367	V	(I, 3)	47-1603.
	1113	367	V	(I, 4)	47-1604.
	1113	367	V	(I, 5)	47-1605.
	1113	367	V	(I, 6)	47-1606.
	1114	367	V	(I, 7)	47-1607.
	1114	367	V	(II, 1)	47-1608.
	1114	367	V	(II, 2)	47-1609.
	1114	367	V	(II, 3)	47-1610.
	1115	367	V	(II, 4)	47-1611.
	1115	367	V	(II, 5)	47-1612.
	1115	367	V	(II, 6)	47-1613.
	1115	367	V	(II, 7)	47-1614.
	1116	367	V	(II, 8)	47-1615.
	1116	367	V	(III, 1)	47-1616.
	1116	367	V	(III, 2)	47-1617.
	1116	367	V	(III, 3)	47-1618.
	1116	367	V	(III, 4)	47-1619.
	1117	367	V	(III, 5)	47-1620.
	1117	367	V	(III, 6)	47-1621.
	1117	367	V	(III, 7)	47-1622.
	1117	367	V	(III, 8)	47-1623.
	1117	367	V	(III, 9)	47-1624.
	1118	367	V	(III, 10)	47-1625.
	1118	367	V	(III, 11)	47-1626.
	1118	367	V	(III, 12)	47-1627.
	1118	367	V	(III, 13)	47-1628.
	1118	367	V	(III, 14)	Effective date.
	1118	367	VI	-----	47-2501.
	1119	367	VII	-----	47-1701 note.
	1119	367	VIII	1	47-2503.
	1119	367	VIII	2	47-2502.

Date	Page	Chapter	Section	D. C. 1940
1939				
July 26...	1124	375	1	23-501.
	1124	375	2	23-502.
	1124	375	3	23-503.
	1124	375	4	23-504.
	1124	375	5, 6	23-504 note.

VOLUME 53—Continued				
Date	Page	Chapter	Section	D. C. 1940
1939				
July 31....	1143	397	-----	4-407.
	1143	398	-----	2-1507.
	1144	400	-----	5-410.
Aug. 3....	1177	412	-----	8-152 note.
	1179	414	1-3	31-1021 note.
Aug. 5....	1210	446	-----	47-1705.
	1211	449	1	9-301.
	1211	449	2	9-302.
	1211	449	3	9-303.
	1211	449	4	9-304.
	1211	449	5	9-305.
	1211	449	6	9-306.
	1211	449	7	Repealing.
	1215	457	-----	10-137 note.
Aug. 7....	1248	546	-----	47-1521.
Aug. 9....	1293	620	1	21-310.
	1294	620	2	21-311.
	1296	620	3	21-312.
	1296	620	4	21-313.
	1296	620	5	21-314.
	1296	620	6	21-315.
	1297	620	7	21-316.
	1297	620	8	21-317.
	1298	620	9	21-318.
	1298	620	10	21-320.
	1299	620	11	21-321.
	1299	620	12	21-322.
	1299	620	13	21-323.
	1299	620	14	21-324.
	1299	620	15	21-325.
	1299	620	16	21-308.
	1299	620	17	21-325 note.
	1299	620	18	21-325 note.
	1300	622	-----	Special.
Aug. 10...	1352	664	1	Title of act.
	1352	664	2	45-1401.
	1352	664	3	45-1402.
	1354	664	4	45-1403.
	1354	664	5	45-1404.
	1354	664	6	45-1405.
	1354	664	7	45-1407.
	1356	664	8	45-1408.
	1357	664	9	45-1410.
	1357	664	10	45-1412.
	1357	664	11	45-1414.
	1358	664	12	45-1417.
Aug. 11...	1408	691	1	6-118.
	1408	691	2	6-119.
	1408	691	3	6-119 note.
	1409	692	-----	47-1910.
	1419	718	-----	2-114.

VOLUME 54				
Date	Page	Chapter	Section	D. C. 1940
1940				
Mar. 2...	38	37	1	47-1518.
	39	37	2	47-1526.
	39	37	3	47-2501.
	39	37	4	47-1504.
Apr. 22...	149	127	1	46-301.
	149	127	2	46-301 note.
	154	131	1	6-701 note.
	155	131	2	6-701.
	155	131	3	6-702.
	155	131	4	6-703.
	155	131	5	6-704.
	156	133	-----	4-302.
	156	134	-----	7-107 note.
	157	136	-----	4-901.
	157	137	-----	Special.
	159-161	139	1-4	Temporary.
	161	140	1, 2	Temporary.
Apr. 25...	163	157	-----	Temporary.
May 14...	207	189	1	11-210, 331; 47-204.
May 20...	217	204	-----	35-415, 416.
June 6...	235	244	-----	16-204.
	241, 242	253	1-3	Special.
	242	254	1	24-202.
	242	254	2	24-203.
	243	254	3	24-204.
	243	254	4	24-205.
	243	254	5	24-206.
	243	254	6 (a)	22-2601.
	244	254	6 (b)	22-2601 note.
	244	254	7 (a)	24-208.
	244	254	7 (b)	24-208 note.
	244	254	8	24-425.
	244	254	9	24-203 note.
	245	254	10	24-405.



## STATUTES AT LARGE—Continued

VOLUME 54—Continued					VOLUME 54—Continued				
Date	Page	Chapter	Section	D. C. 1940	Date	Page	Chapter	Section	D. C. 1940
1940					1940				
June 8...	260	294	1, 2	9-105 note.	June 29...	697	457	2	2-702.
June 11...	299	317	1, 2	9-105 note.		697	457	3	2-703.
June 12...	307	333	1	1-204 note; 11-204 note; 47-134		697	457	4	2-704.
	310	333	1	21-309.		697	457	5	2-705.
	311	333	1	11-1519.		698	457	6	2-706.
	312	333	1	40-503, note; 40-504; 44-213 note.		698	457	7	2-707.
	313	333	1	37-110.		699	457	8	2-708.
	313	333	1	47-118 note.		699	457	9	2-709.
	315	333	1	7-701 note.		700	457	10	2-710.
	316	333	1	31-616; 31-624.		700	457	11	2-711.
	317	333	1	31-1115.		700	457	12	2-712.
	319	333	1	31-305; 31-609.		701	457	13	2-713.
	322	333	1	4-413.		701	457	14	2-714.
	323	333	1	1-215 note; 33-322.		701	457	15	2-715.
	324	333	1	11-924 note.		701	457	16	2-716.
	324	333	1	47-116 note.		701	457	17	2-717.
	325	333	1	11-749.		701	457	18	2-718.
	326	333	1	47-115 note.		701	457	19	2-719.
	327	333	1	47-117 note.		701	457	20, 21	2-719 note.
	334	333	1	40-604.		702	458		2-1502.
	336	333	1	7-618 note.	July 1....	706	494	1	9-213.
	338	333	1	7-603 note.		706	494	2	9-214.
	341-343	333	2-11	Appropriation.	July 2....	716	513	1	2-301.
	347	339		22-2401, 2403.		716	513	2	2-302.
	349	342	1	31-632.		716	513	3	2-303.
	349	342	2	31-633.		716	513	4	2-304.
	349	342	3	31-634.		717	513	5	2-305.
	349	342	4	31-635.		717	513	6	2-306.
	350	342	5	31-636.		717	513	7	2-307.
	350	342	6	31-637.		717	513	8	2-308.
	350	342	7	31-637 note.		718	513	9	2-309.
June 18...	460	395	1	32-403.		718	513	10	2-310.
June 19...	480	397	1	29-801.		718	513	11	2-311.
	481	397	2	29-802.		719	513	12	2-312.
	481	397	3	29-803.		719	513	13	2-313.
	481	397	4	29-804.		720	513	14	2-314.
	481	397	5	29-805.		720	513	15	2-315.
	482	397	6	29-806.		721	513	16	2-316.
	483	397	7	29-807.		721	513	17	2-317.
	483	397	8	29-808.		721	513	18	2-318.
	483	397	9	29-809.		721	513	19	2-319.
	483	397	10	29-810.		721	513	20	2-320.
	483	397	11	29-811.		721	513	21	2-321.
	484	397	12	29-812.		722	513	22	2-322.
	484	397	13	29-813.		722	513	23	2-323.
	484	397	14	29-814.		722	513	24	2-324.
	484	397	15	29-815.		722	513	25	2-325.
	484	397	16	29-816.		722	513	26	2-326.
	484	397	17	29-817.		723	513	27	2-327.
	484	397	18	29-818.		723	513	28	2-328.
	485	397	19	29-819.		723	513	29	2-329.
	485	397	20	29-820.		723	513	30	2-330.
	485	397	21	29-821.		723	513	31	2-331.
	485	397	22	29-822.		723	513	32	2-331 note.
	485	397	23	29-823.		723	513	33	2-331 note.
	485	397	24	29-824.		726	518		35-710, 711.
	485	397	25	29-825.		729	523		31-120.
	485	397	26	29-826.		730	524	I	46-301.
	486	397	27	29-827.		731	524	I	46-303.
	486	397	28	29-828.		731	524	I, § 1	46-304.
	486	397	29	29-829.		732	524	I	46-307.
	486	397	30	29-830.		733	524	I	46-309.
	486	397	31	29-831.		733	524	I	46-313.
	488	397	32	29-832.		733	524	I, § 2	46-301 note.
	488	397	33	29-833.		734	524	I, § 3	46-304 note.
	488	397	34	29-834.		734	524	II	47-1502.
	488	397	35	29-835.		735	525		11-907.
	489	397	36	29-836.		736	527	1	40-701.
	489	397	37	29-837.		736	527	2	40-702.
	489	397	38	29-838.		737	527	3	40-703.
	490	397	39	29-839.		737	527	4	40-704.
	490	397	40	29-840.		737	527	5	40-705.
	490	397	41	29-841.		737	527	6	40-706.
	490	397	42	29-842.		738	527	7	40-707.
	490	397	43	29-843.		738	527	8	40-708.
	490	397	44	29-844.		739	527	9	40-709.
	490	397	45	29-845.		739	527	10	40-710.
	491	397	46	29-846.		739	527	11	40-711.
	491	397	47	29-847.		739	527	12	40-712.
June 27...	639	437		5-316 note; 11-210 note.		739	527	13	40-713.
June 29...	686	444		2-1601.		739	527	14	40-714.
	688	444	2	2-1602.		740	527	15	40-715.
	688	444	3	2-1603.		740	527	16	Effective date.
	689	446	1	11-1421.	July 10...	747	568		47-1629.
	689	446	2	11-1422.	July 11...	748	579	1, 2	Special.
	689	446	3	11-1423.		757	583	1	9-215.
	694	451		9-104 note.		757	583	2	9-216.
	696	457	1	2-701.		757	583	3	9-217.
						758	583	4	9-218.



STATUTES AT LARGE—Continued

VOLUME 54—Continued						VOLUME 54—Continued					
Date	Page	Chapter		Section	D. C. 1940	Date	Page	Chapter		Section	D. C. 1940
		Stat.	Act					Stat.	Act		
1940						1940					
Oct. 9 ----	1063	792	I	1	35-1301.	Oct. 9 ----	1079	792	II	33	35-1337.
	1064	792	I	2	35-1302.		1079	792	II	34	35-1338.
	1064	792	I	3	35-1303.		1079	792	II	35	35-1339.
	1066	792	II	1	35-1304.		1079	792	II	36	35-1340.
	1066	792	II	2	35-1305.		1080	792	II	37	35-1341.
	1066	792	II	3	35-1306.		1080	792	II	38	35-1342.
	1067	792	II	4	35-1307.		1080	792	II	39	35-1343.
	1067	792	II	5	35-1308.		1080	792	II	40	35-1344.
	1068	792	II	6	35-1309.		1081	792	II	41	35-1345.
	1068	792	II	7	35-1310.		1082	792	II	42	35-1346.
	1068	792	II	8	35-1311.		1082	792	II	43	35-1347.
	1069	792	II	9	35-1312.		1082	792	II	44	35-1348.
	1069	792	II	10	35-1313.		1082	792	II	45	35-1349.
	1069	792	II	11	35-1314.		1083	792	II	46	Repealing.
	1070	792	II	12	35-1315.		1083	792	II	47	35-1350.
	1070	792	II	13	35-1316.		1083	792	II	48	Effective date.
	1070	792	II	14	35-1317.						
	1071	792	II	15	35-1318.						
	1071	792	II	16	35-1319.						
	1071	792	II	17	35-1320.						
	1072	792	II	18	35-1321.						
	1073	792	II	19	35-1322.						
	1073	792	II	20	35-1323.						
	1073	792	II	20a	35-1324.						
	1074	792	II	21	35-1325.						
	1074	792	II	22	35-1326.						
	1075	792	II	23	35-1327.						
	1076	792	II	24	35-1328.						
	1076	792	II	25	35-1329.						
	1076	792	II	26	35-1330.						
	1076	792	II	27	35-1331.						
	1076	792	II	28	35-1332.						
	1077	792	II	29	35-1333.						
	1077	792	II	30	35-1334.						
	1077	792	II	31	35-1335.						
	1078	792	II	32	35-1336.						

Date	Page	Chapter	Section	D. C. 1940
1940				
Oct. 10 ---	1109	851	1	1-808.
	1110	851	2(g)	31-1023.
Oct. 14 ---	1118	860		4-508.
	1171	876	503	45-1501 note.
Oct. 17 ---	1204	898	1	46-301.
	1205	898	2	46-301 note.
1941				
Jan. 3 ----	1225	936	1	22-2705.
	1225	936	2	22-2706.
	1226	936	3	22-2707.
	1226	936	4	22-2710 to 2712.







## TABLE OF CASES

References are to Sections

### A

Abdu, In re, 247 U. S. 27	11-1508	American-Mexican Claims Bureau, Inc. v. Morgenthau, (D. C.-D. C.), 26 Fed. Supp. 904	13-108
Abramson v. Abramson, 60 App. D. C. 119, 49 Fed. (2d) 501	30-101	American Sav. Bank v. Eisminger, 35 App. D. C. 51	45-501
Acker v. Acker, 22 App. D. C. 353	16-403	American Security & Trust Co. v. Comrs. of District of Columbia, 224 U. S. 491	7-202
Acquisition of Original Lot 14, and Assessment and Taxation Lot in Washington, D. C., In re, 60 App. D. C. 216, 50 Fed. (2d) 931	16-607	American Security & Trust Co. v. District of Columbia, 29 App. D. C. 265	26-318
Addison v. Barnes, 45 App. D. C. 284	16-1301	American Security & Trust Co. v. Walker, 23 App. D. C. 583	11-320
Aderhold v. Edwards, 71 Fed. (2d) 297	24-402	Anacostia & P. R. R. Co. v. Klein, 8 App. D. C. 75	14-201
Aderhold v. Hudson, 84 Fed. (2d) 559	24-405	Ancient Egyptian Arabic Order v. Michaux, 279 U. S. 737	29-601
Aderhold v. Lee, 68 Fed. (2d) 824	24-201, 24-203, 24-207, 24-208, 24-402	Anderson v. Hoage, 63 App. D. C. 169, 70 Fed. (2d) 773	36-501
Aderhold v. Soileau, 67 Fed. (2d) 259	22-2601, 32-816, 32-909	Anderson v. Lee D. Butler, Inc., 61 App. D. C. 380, 63 Fed. (2d) 271	28-802
Adriance, Platt & Co. v. Heiskell, 8 App. D. C. 240	16-322	Anderson v. Reid, 10 App. D. C. 426	16-505, 16-519
Aetna Life Ins. Co. v. Hoage, 62 App. D. C. 6, 63 Fed. (2d) 818	36-501	Anderson v. Rives, 66 App. D. C. 174, 85 Fed. (2d) 673	22-1301, 22-1801, 22-2403, 22-2404, 24-203, 24-207
Aetna Life Ins. Co. v. Moses, 287 U. S. 530	16-1202, 36-501	Anderson v. White, 2 App. D. C. 408	45-603
Alaska S. S. Co. v. McHugh, 268 U. S. 23	44-401	Andreas v. Clark, 71 Fed. (2d) 908	24-401
Albaugh v. Litho-Marble Decorating Co., 14 App. D. C. 113	38-101	Andrews, R. P., Paper Co. v. Southern Soda Fountain Co., 46 App. D. C. 84	42-101
Aldridge v. United States, 282 U. S. 836	11-1503	Angell v. Groff, 42 App. D. C. 198	14-501, 19-310
Aldridge v. United States, 60 App. D. C. 45, 47 Fed. (2d) 407	22-2401	Anglo-Colombian Dev. Co. v. Stapleton, 57 App. D. C. 209, 19 Fed. (2d) 683	12-201
Alexander v. Alexander, 13 App. D. C. 334	17-101	Armour v. Flook, 44 App. D. C. 415	13-301
Alexander v. Alexander, 36 App. D. C. 78	16-403, 16-410	Armour & Co. v. Kloeb, 109 Fed. (2d) 72	16-1001
Alfred Richards Brick Co. v. Atkinson, 16 App. D. C. 462	13-301, 38-101	Arms v. Burg, 67 App. D. C. 155, 90 Fed. (2d) 400	14-405
Alfred Richards Brick Co. v. Trott, 23 App. D. C. 284	38-101, 38-102, 38-114	Armstrong v. Ashley, 22 App. D. C. 368	16-519, 45-501
Allen v. Allen, 52 App. D. C. 228, 285 Fed. 962	16-419	Armstrong v. United States Bldg. & Loan Assn., 15 App. D. C. 1	26-406
Allen v. Jones, 56 App. D. C. 245, 12 Fed. (2d) 186	16-1301	Army & Navy Club v. District of Columbia, 8 App. D. C. 544	25-103
Allen's Estate, In re, (D. C.-D. C.), 30 Fed. Supp. 243	20-101	Arnstein v. United States, 54 App. D. C. 199, 296 Fed. 946	22-108, 22-2501, 23-104
Alsop v. Fedarwisch, 9 App. D. C. 408	45-816	Associated General Contractors v. Cardillo, 70 App. D. C. 303, 106 Fed. (2d) 327	36-501
Ambler v. Archer, 1 App. D. C. 94	13-103	Atkins v. Best, 27 App. D. C. 148	45-802
Ambrose v. Brown, 42 App. D. C. 25	12-201, 28-617	Atkins v. Children's Hosp., 261 U. S. 525	36-401
Ambrose v. United States, 45 App. D. C. 112	22-1202, 22-1210	Atkinson v. Atkinson, 65 App. D. C. 241, 82 Fed. (2d) 847	16-403
American Elementary Elec. Co. v. Normandy, 46 App. D. C. 329	16-1101	Atkinson v. United States, 53 App. D. C. 277, 289 Fed. 935	22-2203
American Home Life Ins. Co. v. Drake, 30 App. D. C. 263	35-102, 35-105	Atlantic Greyhound Lines, Inc. v. Keesee, 72 App. D. C. 45, 111 Fed. (2d) 657	11-312
American Ice Co. v. Eastern Trust & Banking Co., 17 App. D. C. 422	16-102	Atlantic Ref. Co. v. Virginia, 302 U. S. 22	45-708



Atlas Portland Cement Co. v. Fox, 49 App. D. C. 292, 265 Fed. 444	15-103, 45-501	Barker v. Magruder, 68 App. D. C. 211, 95 Fed. (2d) 122	28-2701
Automatic Weighing Mach. Co. v. Pneumatic Scale Corp., 158 Fed. 415	11-201	Barksdale v. Morgan, 34 App. D. C. 549	17-101
Automobile Brokerage Corp. v. United States, 59 App. D. C. 243, 39 Fed. (2d) 288	17-103	Barnes v. Paanakker, 72 App. D. C. 39, 111 Fed. (2d) 193	13-105, 16-201-16-203, 17-101
Ayers v. Hoage, 61 App. D. C. 388, 63 Fed. (2d) 364	36-501	Barrett v. Bigger, 57 App. D. C. 81, 17 Fed. (2d) 669	23-401
B		Barrett v. Commercial Credit Co., 54 App. D. C. 249, 296 Fed. 996	38-201
Baer v. United States, 54 App. D. C. 24, 293 Fed. 843	22-2205	Barrett v. United States, 62 App. D. C. 25, 64 Fed. (2d) 148	22-504
Bailey v. Allan E. Walker, Inc., 55 App. D. C. 74, 2 Fed. (2d) 123	11-703	Barry v. Hall, 68 App. D. C. 350, 98 Fed. (2d) 222	16-801, 16-808, 21-306, 21-314, 21-316
Bailey v. Allen E. Walker & Co., 53 App. D. C. 307, 290 Fed. 282	45-932	Barry v. White, 62 App. D. C. 69, 64 Fed. (2d) 707	16-806, 24-301
Bailey v. District of Columbia, 4 App. D. C. 356	16-1701	Bata Shoe Co. v. Perkins (D. C.-D. C.), 33 Fed. Supp. 508	16-801
Bailey v. Scott, 57 App. D. C. 142, 18 Fed. (2d) 184	16-410	Bateman v. Bateman, 42 App. D. C. 230	16-403
Bailey v. United States, 69 App. D. C. 25, 98 Fed. (2d) 306	11-616, 22-2701	Baum v. Knabe Mfg. Co., 33 App. D. C. 237	42-103
Bailey v. Walker, 55 App. D. C. 74, 2 Fed. (2d) 123	17-101	Bauman v. Ross, 167 U. S. 548	1-102, 7-102, 7-109, 7-110, 47-807
Baker v. District of Columbia, 39 App. D. C. 42	21-301	Beall v. White, 94 U. S. 382	45-915
Baker v. Warner, 231 U. S. 588	22-1508	Bean v. Patterson, 110 U. S. 401	11-1507
Baldi v. Ambrogio, 67 App. D. C. 101, 89 Fed. (2d) 845	12-303	Bean v. Reynolds, 15 App. D. C. 125	18-301
Balinovic v. Evening Star Newspaper Co., 72 App. D. C. 176, 113 Fed. (2d) 505	40-403	Bean v. Wheatley, 13 App. D. C. 473	12-305
Ballou v. Kemp, 68 App. D. C. 7, 92 Fed. (2d) 556	16-1001, 31-301, 31-303, 31-305	Beard v. Bennett, 72 App. D. C. 269, 114 Fed. (2d) 578	24-402
Balster v. Cadick, 29 App. D. C. 405	18-215	Beard v. Sanford, 99 Fed. (2d) 750	22-1504, 22-1505, 22-2601
Baltimore & O. R. Co. v. Harris, 12 Wall. (79 U. S.) 65	11-305	Beard v. Sanford, 105 Fed. (2d) 141	22-1504
Baltimore & O. R. Co. v. Interstate Commerce Comm., 221 U. S. 612	44-401	Beard v. United States, 65 App. D. C. 231, 82 Fed. (2d) 837	22-1504
Baltimore & O. R. Co. v. Morgan, 35 App. D. C. 195	14-308	Beasley v. Baltimore & P. R. R. Co., 27 App. D. C. 595	12-201, 13-301
Baltimore & O. R. Co. v. Thomas, 37 App. D. C. 255	49-301	Beausoliel v. United States, 71 App. D. C. 111, 107 Fed. (2d) 292	22-501, 22-502, 22-503, 22-504, 22-901
Baltimore & P. R. Co. v. Cumberland, 176 U. S. 232	1-224	Bedell v. U. S., 63 App. D. C. 31, 68 Fed. (2d) 776	14-104
Baltimore & P. R. Co. v. Fifth Baptist Church, 137 U. S. 568	29-601	Behrle v. United States, 69 App. D. C. 304, 100 Fed. (2d) 714	22-2405
Baltimore & P. R. Co. v. Golway, 6 App. D. C. 143	16-1201	Bell v. District of Columbia, 50 App. D. C. 351, 273 Fed. 315	40-617
Baltimore & P. R. Co. v. Taylor, 6 App. D. C. 259	18-202	Bell v. Harlan, 57 App. D. C. 255, 20 Fed. (2d) 271	43-103, 43-122
Baltimore & P. R. Co. v. Trustees of the Sixth Presbyterian Church, 19 Wall. (86 U. S.) 64	11-305	Bell v. United States, 49 App. D. C. 367, 265 Fed. 1007	22-3204
Baltimore and P. R. Co. v. Trustees of the Sixth Presbyterian Church, 1 Otto (91 U. S.) 127	11-313	Bell v. United States, 60 App. D. C. 76, 47 Fed. (2d) 438	22-2401
Bank of Columbia v. Okely, 4 Wheat. (17 U. S.) 235	49-301	Benson v. Henkel, 198 U. S. 1	11-305
Banville v. Sullivan, 11 App. D. C. 23	16-303	Benson v. United States, 27 App. D. C. 331	22-701
Barbagollo v. Fishbien, 52 App. D. C. 318, 286 Fed. 780	30-208	Bergheimer v. Bergheimer, 17 App. D. C. 381	14-306, 16-419
Barbour v. Hickey, 2 App. D. C. 207	18-202	Berkeley v. Culley, 42 App. D. C. 140	13-103
Barbour v. Paige Hotel Co., 2 App. D. C. 174	16-301	Berkley v. Harper, 3 App. D. C. 308	35-901
Barbour v. Moore, 4 App. D. C. 535	19-101	Berl v. Dulany, 42 App. D. C. 121	18-202
Bardwell v. Petty, 52 App. D. C. 310, 286 Fed. 772	22-1111, 47-2003, 49-201	Bernhardt v. City & S. R. Co., 49 App. D. C. 265, 263 Fed. 1009	14-201
		Bernsdorff v. Bernsdorff, 26 App. D. C. 228	17-101
		Bernsdorff v. Bernsdorff, 26 App. D. C. 520	16-415
		Berry & Whitmore Co. v. Dante, 43 App. D. C. 110	12-202, 18-509, 18-518, 20-403
		Beyer v. Brownlow, 51 App. D. C. 92, 276 Fed. 460	16-601, 16-606, 16-607, 16-610
		Beyer v. Le Fevre, 186 U. S. 114	11-503, 19-313



Beyer v. Smith, 59 App. D. C. 32, 32 Fed. (2d) 423	45-904	Bradley, Ex parte, 7 Wall. (74 U. S.) 364	11-316, 11-322, 16-1001
Biddle v. United States, 156 Fed. 759	22-1301	Bradley v. Fisher, 13 Wall. (80 U. S.) 335	11-301, 11-501, 11-1301
Bieber v. Fehcheimer, 9 App. D. C. 548	15-201	Bradshaw v. Ashley, 180 U. S. 59	16-501
Bieber v. Gam's, 24 App. D. C. 517	45-501	Bradshaw v. Ashley, 14 App. D. C. 485	16-515
Biggs v. Campbell, 46 App. D. C. 288	15-103	Brandenberg v. District of Columbia, 205 U. S. 135	7-317
Billings v. Field, 36 App. D. C. 16	11-305	Brandenburg v. Dante, 49 App. D. C. 141, 261 Fed. 1021	20-403, 20-404, 20-405
Biscayne Trust Co. v. American Security & Trust Co., 57 App. D. C. 251, 20 Fed. (2d) 267	12-108, 12-116, 16-411, 16-413	Branham v. Johnson, 66 App. D. C. 230, 85 Fed. (2d) 807	11-718
Bishop v. United States, 71 App. D. C. 132, 107 Fed. (2d) 297	22-2401	Branson v. Reichelderfer, 62 App. D. C. 129, 65 Fed. (2d) 280	16-606, 16-607
Blackburn v. United States, 66 App. D. C. 15, 84 Fed. (2d) 269	11-616, 22-2701	Bray v. United States, 39 App. D. C. 600	22-3001
Bladgen v. United States ex rel. Preinkert, 18 App. D. C. 370	13-401	Breneman v. Herdman, 35 App. D. C. 27	45-812
Blair v. United States ex rel. Hellman, 45 App. D. C. 353	16-1001	Brennan Constr. Co. v. Cumberland, 29 App. D. C. 554	22-1703
Blandy v. Blandy, 20 App. D. C. 535	16-403	Breuninger v. Lightbown, 60 App. D. C. 297, 53 Fed. (2d) 551	17-104
Blanks v. Hazen, 66 App. D. C. 118, 85 Fed. (2d) 284	47-2329	Brice v. Curtis, 38 App. D. C. 304	22-2304
Bliss v. Bliss, 60 App. D. C. 237, 50 Fed. (2d) 1002	13-108, 16-410, 16-413, 16-415	Briel v. Jordan, 27 App. D. C. 202	16-515
Bliss v. Duncan, 44 App. D. C. 93	11-736, 45-822, 45-902	Briggs v. Brownlow, 49 App. D. C. 345, 265 Fed. 985	7-201, 7-206, 7-208
Block v. Ryan, 4 App. D. C. 283	16-1501	Brooks v. Southern Pac. Co., 148 Fed. 986	44-402
Bloedorn v. Bloedorn, 64 App. D. C. 199, 76 Fed. (2d) 812	16-403	Brosius v. Botkin, 72 App. D. C. 279, 114 Fed. (2d) 22	24-401
Bloedorn v. Washington Times Co., 67 App. D. C. 91, 89 Fed. (2d) 835	13-103, 29-718	Brosnan v. Brosnan, 263 U. S. 345	19-101, 19-307, 19-309, 19-312
Blount v. United States, 59 Ct. Cls. 328	45-816	Brosnan v. Brosnan, 53 App. D. C. 149, 289 Fed. 547	11-515, 20-204, 20-504
Boardman v. Carey, 62 App. D. C. 152, 65 Fed. (2d) 600	16-410	Brosnan v. Fox, 52 App. D. C. 143, 284 Fed. 923	18-301, 20-605, 20-610
Bolt v. United States, 55 App. D. C. 120, 2 Fed. (2d) 922	22-3204	Brotherhood of Railroad Trainmen v. Groves, 48 App. D. C. 151	35-202, 35-203
Bond v. Carter Hdw. Co., 15 App. D. C. 72	11-744	Brown v. Allen E. Walker & Co., 58 App. D. C. 173, 26 Fed. (2d) 545	11-718, 11-724, 11-743, 15-101, 15-102
Bonding Co. v. United States ex rel. Paynter, 23 App. D. C. 535	20-117	Brown v. Baltimore & O. R. Co., 6 App. D. C. 237	13-301
Booger v. Roach, 25 App. D. C. 324	12-201	Brown v. Delafield & Baxter Cement Co., 1 App. D. C. 232	29-701
Boosalis v. Crawford, 69 App. D. C. 141, 99 Fed. (2d) 374	22-1504, 22-1505	Brown v. Easterhazy, 25 W. L. R. 478	18-406
Boss v. Hagan, 49 App. D. C. 106, 261 Fed. 254	45-820, 45-902	Brown v. Grand Fountain, 28 App. D. C. 200	35-901
Boss v. Hardee, 68 App. D. C. 75, 93 Fed. (2d) 234	16-1901	Brown v. Macfarland, 19 App. D. C. 525	7-204
Bost v. Rexine Co., 56 App. D. C. 34, 8 Fed. (2d) 795	28-701, 28-724	Brown v. Macfarland, 22 App. D. C. 412	11-1507
Bostic v. United States, 68 App. D. C. 167, 94 Fed. (2d) 636	14-305	Brown v. Petersen, 25 App. D. C. 359	11-744, 45-915
Bowen v. Howenstein, 39 App. D. C. 585	19-301, 19-308, 19-309	Brown v. Rudolph, 58 App. D. C. 116, 25 Fed. (2d) 540	21-328
Bowen v. Mount Vernon Sav. Bank, 66 App. D. C. 139, 85 Fed. (2d) 396	45-614	Brown v. Savings Bank, 28 App. D. C. 351	13-301
Bowen v. Mount Vernon Sav. Bank, 70 App. D. C. 273, 105 Fed. (2d) 796	28-405, 28-2701, 28-2702	Brown v. Sellers, 53 App. D. C. 373, 292 Fed. 655	11-907
Bowles v. District of Columbia, 22 App. D. C. 321	11-606, 11-616	Brown v. Slater, 23 App. D. C. 51	11-735
Bracey v. Hill, 11 Fed. Supp. 148	24-204, 24-209	Brown v. Slocum, 30 App. D. C. 576	28-2704
Bracey v. Zerbst, 93 Fed. (2d) 8	22-502, 24-203	Brown v. United States, 35 App. D. C. 548	22-2201
Bradbury v. Howard, 58 App. D. C. 383, 31 Fed. (2d) 222	30-207	Brown v. United States, 58 App. D. C. 311, 30 Fed. (2d) 474	22-3204
Bradfield v. Roberts, 175 U. S. 291	29-501	Brown v. United States, 59 App. D. C. 57, 32 Fed. (2d) 953	22-1504
Bradford v. Brown, 22 App. D. C. 455	16-301	Brown v. Waring, 1 App. D. C. 378	33-110
Bradford v. Matthews, 9 App. D. C. 438	19-205	Brownlow v. O'Donoghue, 51 App. D. C. 114, 276 Fed. 636	7-102
		Bruckner-Mitchell v. Sun Indemnity Co., 65 App. D. C. 178, 82 Fed. (2d) 434	1-804, 33-110



Brumbaugh v. Gompers, 50 App. D. C. 130, 269 Fed. 472	16-1501	Capital Transit Co. v. District of Columbia, 66 App. D. C. 351, 87 Fed. (2d) 748	47-2331
Bryan v. Curtis, 30 App. D. C. 234	20-501	Capital Transit Co. v. Hazen, 68 App. D. C. 91, 93 Fed. (2d) 250	44-211
Buffalo Union Furnace Co. v. United States Ship. Board Emergency Fleet Corp., 283 Fed. 673	29-201	Capital Transit Co. v. Hoage, 65 App. D. C. 382, 84 Fed. (2d) 235	36-501
Bugher v. Gottwals, 60 App. D. C. 340, 54 Fed. (2d) 451	5-414	Capitol Dress Mfg. Co. v. Moran, 65 App. D. C. 400, 84 Fed. (2d) 253	29-211
Bullock v. Morehouse, 57 App. D. C. 231, 19 Fed. (2d) 705	19-103	Caplan, In re, 23 Fed. (2d) 680	45-915
Bunch v. United States ex rel. Keppler, 40 App. D. C. 156	16-906	Cardillo v. Hartford Acc. & Indem. Co., 71 App. D. C. 330, 109 Fed. (2d) 674	36-501
Bunten v. American Security & Trust Co., 25 App. D. C. 226	45-501	Cardillo v. Liberty Mut. Ins. Co., 68 App. D. C. 330, 101 Fed. (2d) 254	36-501
Burdette v. Burdette, 2 Mackey (13 D. C.) 469	16-419	Cardillo v. Mockabee, 70 App. D. C. 16, 102 Fed. (2d) 620	36-501
Burdick v. Burdick, (D. C.-D. C.), 33 Fed. Supp. 921	45-102, 49-301	Carmody v. Capital Trac. Co., 43 App. D. C. 245	14-308
Burge v. United States, 26 App. D. C. 524	22-2401	Carpenter v. United States, 69 App. D. C. 306, 100 Fed. (2d) 716	22-2501
Burns v. United States, 287 U. S. 216	24-205	Carranzo v. District of Columbia, 56 App. D. C. 118, 10 Fed. (2d) 983	1-224
Burroughs v. Burroughs, 55 App. D. C. 271, 4 Fed. (2d) 938	30-103	Carroll v. Elkins, 58 App. D. C. 265, 29 Fed. (2d) 638	15-103, 30-207
Burrowes v. Burrowes, 64 App. D. C. 392, 78 Fed. (2d) 742	16-807	Carroll v. Parry, 48 App. D. C. 453	4-136
Bursey v. Lyon, 30 App. D. C. 597	16-505, 16-1301	Carroll v. Reidy, 5 App. D. C. 59	45-816
Butts v. Merchants & Miners Transp. Co., 230 U. S. 126	44-401	Carroll Elec. Co. v. Freed-Eisemann Radio Corp., 60 App. D. C. 228, 50 Fed. (2d) 993	13-103
Byrne v. Morrison, 25 App. D. C. 72	15-201, 45-902	Carson v. Jackson, 52 App. D. C. 51, 281 Fed. 411	12-201
C			
Cadarr v. United States, 24 App. D. C. 143	23-105	Carter v. Cutting, 8 Cranch (12 U. S.) 251	11-501
Cady v. United States, 54 App. D. C. 10, 293 Fed. 829	22-1801	Carusi v. Savary, 6 App. D. C. 330	45-501
Caffrey v. Caffrey, 55 App. D. C. 285, 4 Fed. (2d) 952	16-411, 16-413	Carver v. Hall, 3 App. D. C. 170	16-1901
Cafritz v. Hazen, 66 App. D. C. 94, 85 Fed. (2d) 260	7-204, 7-221	Case v. Helwig, 62 App. D. C. 98, 65 Fed. (2d) 186	17-101
Cahill v. Eberly, 59 App. D. C. 228, 38 Fed. (2d) 539	18-211, 18-214	Castleman v. Avignone, 56 App. D. C. 253, 12 Fed. (2d) 326	5-419
Cain v. Southern R. Co., 199 Fed. 211	44-401	Catholic University v. Waggaman, 32 App. D. C. 307	12-305, 28-409
California Co-op. Canneries v. United States, 55 App. D. C. 36, 299 Fed. 908	11-312	Cave v. District of Columbia, 67 App. D. C. 138, 90 Fed. (2d) 383	47-2331
Callan v. Wilson, 127 U. S. 540	11-312, 11-601, 11-616	Cave v. Rudolph, 53 App. D. C. 12, 287 Fed. 989	1-226
Calvert v. Terminal Taxicab Co., 48 App. D. C. 119	16-1201	Central Nat. Bank v. National Met. Bank, 31 App. D. C. 391	28-124
Camp v. Boyd, 35 App. D. C. 159	16-501, 45-809	Central of Georgia R. Co. v. W. Va. Pulp & Paper Co., 67 App. D. C. 309, 92 Fed. (2d) 292	11-317
Campbell v. Porter, 162 U. S. 478	11-310, 11-501, 11-504, 14-403	Chalaire v. Franklin, 81 Fed. (2d) 105	12-201
Campbell v. Rawlings, 52 App. D. C. 37, 280 Fed. 1011	12-302	Chamberlain Metal Weather Strip Co. v. Karrick, 60 App. D. C. 316, 53 Fed. (2d) 928	38-102
Campbell v. Willis, 53 App. D. C. 296, 296 Fed. 271	14-201	Chandler & Taylor Co. v. Norwood, 14 App. D. C. 357	28-504
Cancelmo v. Seaboard A. L. R. Co., 56 App. D. C. 225, 12 Fed. (2d) 166	13-103	Chanock v. United States, 50 App. D. C. 54, 267 Fed. 612	22-1202, 22-1205, 22-2201
Capital Apartment Corp. v. Vassos, 62 App. D. C. 136, 65 Fed. (2d) 482	11-735	Chaparas v. Kountakis, 59 App. D. C. 367, 42 Fed. (2d) 351	17-101
Capital Trac. Co. v. Hof, 174 U. S. 1	11-101, 11-616	Chapman v. Dismer, 14 App. D. C. 446	19-101, 19-103
Capital Trac. Co. v. King, 44 App. D. C. 315	14-303	Chapman v. Griffiths-Consumers Co., 71 App. D. C. 64, 107 Fed. (2d) 263	36-501
Capital Trac. Co. v. Lusby, 12 App. D. C. 295	14-306	Chapman v. Hoage, 296 U. S. 526	12-201
Capital Trac. Co. v. Rockwell, 17 App. D. C. 369	30-208	Chapman v. Hoage, 64 App. D. C. 349, 78 Fed. (2d) 233	36-501
Capital Trac. Co. v. United States, 34 App. D. C. 591	17-103	Chapman v. United States, 164 U. S. 436	11-305



Chappell v. O'Brien, 22 App. D. C. 190	17-101	Ciawans v. Sheetz, 67 App. D. C. 366, 92 Fed.	
Charles v. United States, 183 Fed. 566	33-103	(2d) 517	18-501,
Chase v. Du Pont Nat. Bank, 277 Fed. 235	28-206		18-503, 18-513, 18-516—18-519, 18-521,
Chase v. United States, 7 App. D. C. 149	14-306		18-525, 18-526, 18-530, 20-501, 49-301
Chase Bag Co. v. Munson S. S. Line, 54 App. D. C. 169, 295 Fed. 990	13-103	Cleveland v. Mattingly, 52 App. D. C. 374, 287 Fed. 948	11-602, 11-616, 24-401
Chebithes v. Price, 59 App. D. C. 212, 37 Fed. (2d) 1008	14-305	Clifton v. United States, 54 App. D. C. 104, 295 Fed. 925	14-305
Chesapeake Beach R. Co. v. Washington, P. & C. R. Co., 199 U. S. 247	45-603	Cogger v. Hazen, 66 App. D. C. 196, 85 Fed. (2d) 695	47-1205, 47-1207, 47-1209
Chesapeake Beach R. Co. v. Washington, P. & C. R. Co., 23 App. D. C. 587	16-501, 16-515	Cogswell v. Cogswell, 49 App. D. C. 31, 258 Fed. 287	16-419
Chesapeake & Ohio Canal Co. v. Key, 3 Cranch (7 U. S.) 599, 601	47-807	Coit's Estate, In re, 3 App. D. C. 246	20-106, 20-201
Chesapeake & Potomac Tel. Co. v. Manning, 186 U. S. 238	43-1401, 43-1402	Colbert v. Baetjer, 4 App. D. C. 416	42-101
Chesevoir v. District of Columbia, 58 App. D. C. 268, 29 Fed. (2d) 798	40-301, 40-302	Colby v. Riggs Nat. Bank, 67 App. D. C. 259, 92 Fed. (2d) 183	28-2301,
Chicago Business College v. Payne, 20 App. D. C. 606	29-401		28-2302, 28-2306, 28-2309, 28-2313
Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559	44-401	Cole v. Cole, 52 App. D. C. 302, 286 Fed. 764	16-419
Chicago, M. & St. P. R. Co. v. Westby, 178 Fed. 619	44-401	Coleman v. District of Columbia, 51 App. D. C. 352, 279 Fed. 990	31-102
Children's Hosp. v. Adkins, 52 App. D. C. 109, 284 Fed. 613	11-201	Coleman v. Schwartz, 50 App. D. C. 111, 268 Fed. 701	21-301
Chiswell v. Johnston, 55 App. D. C. 3, 299 Fed. 681	12-303	Colliflower, James E., & Co. v. McCallum-Sauber Co., 61 App. D. C. 390, 63 Fed. (2d) 366	16-319, 16-320
Christman, H. G., Co. v. Michigan Gypsum Co., 85 Fed. (2d) 474	1-304	Collins v. McBlair, 29 App. D. C. 354	15-106
Chunn v. City & S. R. Co., 23 App. D. C. 551	13-301	Colonna v. Alton, 23 App. D. C. 296	19-103
Church v. Church, 50 App. D. C. 237, 270 Fed. 359	16-410, 16-419, 16-808, 21-108	Colts v. District of Columbia, 59 App. D. C. 224, 38 Fed. (2d) 535	49-301
Church v. Church, 50 App. D. C. 239, 270 Fed. 361	17-101	Columbia v. Krause, 11 App. D. C. 398	12-201
Cissell v. Cissell, 61 App. D. C. 271, 61 Fed. (2d) 679	16-415	Columbia Brick Co. v. District of Columbia, 1 App. D. C. 351	38-101
Cissell v. Johnston, 4 App. D. C. 335	16-301, 16-326, 28-2601	Columbia Heights Realty Co. v. Rudolph, 217 U. S. 547	7-202
C. I. T. Corp. v. Carl, 66 App. D. C. 232, 85 Fed. (2d) 809	42-103	Columbia Nat. Bank v. Schacklett, 57 App. D. C. 130, 18 Fed. (2d) 172	30-201, 30-208
City Bank v. Hamilton Nat. Bank, 71 App. D. C. 225, 108 Fed. (2d) 588	28-124	Columbian Cat Fanciers v. Koehne, 68 App. D. C. 257, 96 Fed. (2d) 529	16-1602
Clagett v. United States, 53 App. D. C. 134, 289 Fed. 532	22-1301	Columbian Fraternal Assn. v. Smith, 54 App. D. C. 308, 297 Fed. 837	35-910
Claiborne-Annapolis Ferry Co. v. United States, 285 U. S. 382	11-305	Columbia University v. Taylor, 25 App. D. C. 124	12-201
Clark v. Associated Retail Credit Men, 70 App. D. C. 183, 105 Fed. (2d) 62	22-2305	Commercial Bank v. Consumers Brew. Co., 16 App. D. C. 186	17-101
Clark v. Harmer, 5 App. D. C. 114	45-501, 45-503	Commercial Casualty Ins. Co. v. Hoage, 64 App. D. C. 158, 75 Fed. (2d) 677	36-501
Clark v. Mathewson, 7 App. D. C. 382	21-303, 45-1104	Commercial Credit Co. v. Campbell, 64 App. D. C. 64, 74 Fed. (2d) 463	45-501
Clark v. Read, 12 App. D. C. 343	28-123	Commercial Credit Co. v. McReynolds, 63 App. D. C. 42, 68 Fed. (2d) 990	14-306, 14-307, 15-312
Clark v. United States, 19 App. D. C. 295	11-1401, 49-301	Commercial Nat. Bank v. McCandish, 57 App. D. C. 378, 23 Fed. (2d) 986	28-110, 28-202
Claudy v. Duvall, 55 App. D. C. 319, 5 Fed. (2d) 381	18-723, 20-604, 20-605	Commissioners of District of Columbia v. Baltimore & P. R. Co., 114 U. S. 453	7-1210, 7-1212, 7-1213
Clawans v. District of Columbia, 61 App. D. C. 298, 62 Fed. (2d) 383	14-305	Commissioners of District of Columbia v. Shannon & Luchs Constr. Co., 57 App. D. C. 67, 17 Fed. (2d) 219	5-413, 16-601
Clawans v. District of Columbia, 66 App. D. C. 11, 84 Fed. (2d) 265	11-616	Compton v. Rudolph, 56 App. D. C. 211, 12 Fed. (2d) 152	7-301, 7-302, 7-303
Clawans v. District of Columbia, 67 App. D. C. 58, 89 Fed. (2d) 802	11-208	Concord Imp. Co. v. Reichelderfer, 62 App. D. C. 101, 65 Fed. (2d) 189	7-315
		Condon v. Mallan, 58 App. D. C. 371, 30 Fed. (2d) 995	18-704, 18-713



Conkling v. New York Life Ins. & Trust Co., 49 App. D. C. 166, 262 Fed. 620	14-302	Cruit v. Owen, 21 App. D. C. 378	19-101, 19-103
Consaul v. Cummings, 24 App. D. C. 36	16-102	Cunningham v. Rodgers, 50 App. D. C. 51, 267 Fed. 609	49-301
Consolidated Radio Artists v. Washington Section, 70 App. D. C. 262, 105 Fed. (2d) 785	13-103	Curriden v. Middleton, 232 U. S. 633	11-325
Continental Casualty Co. v. Kelly, 70 App. D. C. 320, 106 Fed. (2d) 841	16-1909	Curriden v. Middleton, 37 App. D. C. 568	14-405
Continental Casualty Co. v. North American Cement Corp., 67 App. D. C. 234, 91 Fed. (2d) 307	1-804	Curtis v. Whiteford, 59 App. D. C. 330, 41 Fed. (2d) 302	11-1302
Continental Ins. Co. v. Reading Co., 259 U. S. 156	17-101	Cush v. Allen, 56 App. D. C. 327, 13 Fed. (2d) 299	14-302
Cook v. Alaska S. S. Co., 8 Fed. (2d) 207	11-305	D	
Cook v. Speare, 13 App. D. C. 446	18-503, 20-503	Dahlgren, In re, 30 App. D. C. 588	19-312
Coombe v. United States ex rel. Selis, 55 App. D. C. 190, 3 Fed. (2d) 714	1-226, 47-2339	Dahlgren v. Dahlgren, 55 App. D. C. 52, 1 Fed. (2d) 755	12-303
Cooper v. Cooper, 30 Fed. Supp. 151	16-403	Dahlgren v. National Sav. & Trust Co., 41 App. D. C. 201	18-612
Cooper v. Olcott, 1 App. D. C. 123	12-305	Daly v. Sacks, 59 App. D. C. 216, 38 Fed. (2d) 388	13-301
Cooper v. Woodin, 63 App. D. C. 311, 72 Fed. (2d) 179	26-101, 26-102	Dancy v. Clark, 24 App. D. C. 487	29-201, 29-204, 29-231, 45-503
Coratola v. United States, 24 App. D. C. 229	22-501	Dane v. United States, 57 App. D. C. 161, 18 Fed. (2d) 811	22-105, 22-1105
Corbett v. Pond, 10 App. D. C. 17	12-102	Danenhower v. Ball, 8 App. D. C. 137	12-102
Costello v. Palmer, 20 App. D. C. 210	17-101, 49-301	Dangerfield v. Williams, 26 App. D. C. 508	12-201
Costigan v. Adkins, 57 App. D. C. 153, 18 Fed. (2d) 803	11-1302	Daniel v. Drury, 50 App. D. C. 107, 267 Fed. 751	12-201
Counselman v. Pitzer, 65 App. D. C. 71, 79 Fed. (2d) 707	28-105, 28-110, 28-406	Dante, Ex parte, 228 U. S. 429	11-205
Coupe v. United States, 72 App. D. C. 86, 113 Fed. (2d) 145	22-1501	Dante v. Hutchins, 49 App. D. C. 348, 265 Fed. 988	16-1801
Cox v. McConnell, 80 Fed. (2d) 258	24-402	Dante v. Miniggio, 46 App. D. C. 162	11-504
Craig v. Rowland, 10 App. D. C. 402	18-714, 45-204, 45-812	Darby v. Montgomery County Nat. Bank, 63 App. D. C. 313, 72 Fed. (2d) 181	11-317, 11-318
Craighead v. Alexander, 38 App. D. C. 229	11-503, 17-101, 19-309	Davidson v. E. F. Brooks Co., 46 App. D. C. 457	38-122
Crandall v. Lynch, 20 App. D. C. 73	13-302	Davis v. Casey, 70 App. D. C. 27, 103 Fed. (2d) 529	28-801
Crane v. District of Columbia, 53 App. D. C. 159, 289 Fed. 557	1-224, 1-226, 7-1205	Davis v. Coblenz, 174 U. S. 719	16-1501
Crawford v. United States, 212 U. S. 183	11-1417	Davis v. Davis, 305 U. S. 32	16-403
Crawford v. United States, 59 App. D. C. 356, 41 Fed. (2d) 979	14-305	Davis v. Davis, 61 App. D. C. 43, 57 Fed. (2d) 414	16-412
Creel v. Adams, 49 App. D. C. 306, 265 Fed. 456	45-904	Davis v. Davis, 68 App. D. C. 240, 96 Fed. (2d) 512	16-413
Creel v. Creel, 43 App. D. C. 82	16-401	Davis v. Fidelity & Deposit Co., 63 App. D. C. 395, 73 Fed. (2d) 118	16-1715, 28-2707, 28-2708
Crenshaw v. McCormick, 19 App. D. C. 494	19-205	Davis v. Taylor, 51 App. D. C. 97, 276 Fed. 619	11-735, 17-101
Creswill v. Grand Lodge K. of P., 225 U. S. 246	29-601	Davis v. United States, 16 App. D. C. 442	22-501
Crichton v. United States, 67 App. D. C. 300, 92 Fed. (2d) 224	22-201	Davis v. United States, 18 App. D. C. 468	22-2201
Croissant v. Empire State Realty Co., 29 App. D. C. 538	26-406, 28-2703	Davis v. United States, 37 App. D. C. 126	22-1202, 22-1301, 23-201
Crook v. International Trust Co., 32 App. D. C. 490	28-2503	Dawson v. Taylor, 55 App. D. C. 237, 4 Fed. (2d) 430	45-611
Cropley v. Eyster, 9 App. D. C. 373	12-201, 12-305, 45-612	Dawson v. Waggaman, 23 App. D. C. 423	14-302
Cropper v. McLane, 6 App. D. C. 119	20-108	De Benque v. United States, 66 App. D. C. 36, 85 Fed. (2d) 202	22-2201, 24-203, 24-204, 24-206
Crosby v. Dodge, 60 App. D. C. 36, 46 Fed. (2d) 727	7-611	De Forest v. United States, 11 App. D. C. 466	49-301
Crosby v. Moebs, 61 App. D. C. 42, 57 Fed. (2d) 408	7-611	Degge v. Hitchcock, 35 App. D. C. 218	11-305
Crosby v. Ridout, 27 App. D. C. 481	45-501	Deland v. Wagner, 62 App. D. C. 54, 64 Fed. (2d) 552	38-109, 38-118, 38-120
Croson v. District of Columbia, 55 App. D. C. 122, 2 Fed. (2d) 924	1-101, 1-102, 1-224, 40-301	Del Vecchio v. Bowers, 296 U. S. 280	36-501
Cross v. United States, 145 U. S. 571	11-305, 11-310, 11-322	Del Vecchio v. Bowers, 62 App. D. C. 327, 67 Fed. (2d) 751	36-501
		Deming v. Wardman Constr. Co., 59 App. D. C. 254, 39 Fed. (2d) 504	38-101
		Dengel v. Brown, 1 App. D. C. 423	45-802



Dennett v. Dennett, 63 App. D. C. 252, 71 Fed. (2d) 975	16-401	District of Columbia v. Garrison, 25 App. D. C. 563	23-105
Dennis v. Hamilton, 48 App. D. C. 160	11-504, 20-203	District of Columbia v. Georgetown & T. R. Co., 59 App. D. C. 335, 41 Fed. (2d) 424	47-1918
DePoilly v. Palmer, 28 App. D. C. 324	23-401	District of Columbia v. Georgetown Gas Light Co., 45 App. D. C. 63	35-105, 47-1701
DePue v. District of Columbia, 45 App. D. C. 54	21-301	District of Columbia v. Humphries, 11 App. D. C. 68	11-205
De Ruiz v. De Ruiz, 66 App. D. C. 370, 88 Fed. (2d) 752	20-701	District of Columbia v. Hutton, 143 U. S. 18	4-103
Desio v. Hutchinson, 36 App. D. C. 68	11-735	District of Columbia v. Kendall, 57 App. D. C. 271, 20 Fed. (2d) 287	11-616, 23-105
Devlin v. Esher, 52 App. D. C. 30, 280 Fed. 1004	16-1301, 16-1304-16-1306	District of Columbia v. Lockwood, 57 App. D. C. 270, 20 Fed. (2d) 286	5-101
Dexter v. Lichliter, 24 App. D. C. 222	13-103, 13-217	District of Columbia v. Lynham, 16 App. D. C. 85	23-105, 33-101, 33-103
Diamantopoulos v. Glekas, 56 App. D. C. 151, 11 Fed. (2d) 200	20-201, 20-202, 20-204	District of Columbia v. Metropolitan R. Co., 8 App. D. C. 322	28-2701
Dickhart v. United States, 57 App. D. C. 5, 16 Fed. (2d) 345	17-103	District of Columbia v. Mt. Vernon Seminary, 69 App. D. C. 251, 100 Fed. (2d) 116	29-403, 29-404, 31-302, 47-802
Dickinson v. Brooks, 71 App. D. C. 106, 108 Fed. (2d) 4	15-304, 15-309	District of Columbia v. Moyer, 68 App. D. C. 98, 93 Fed. (2d) 527	23-101, 40-603
Dick Murphy, Inc. v. Holcer, 61 App. D. C. 65, 57 Fed. (2d) 431	12-306	District of Columbia v. Nash, 57 App. D. C. 269, 20 Fed. (2d) 285	5-101
Dieterich v. Dieterich, 48 App. D. C. 356	17-101	District of Columbia v. Newman, 59 App. D. C. 163, 37 Fed. (2d) 444	31-610, 31-617
Diggs v. Thurston, 39 App. D. C. 267	11-1301, 11-1302	District of Columbia v. Petty, 229 U. S. 593	47-112
Dingman v. Henry, 51 App. D. C. 339, 279 Fed. 795	12-101	District of Columbia v. Riggs Nat. Bank, 58 App. D. C. 349, 30 Fed. (2d) 873	47-1207, 47-1701
District-Florida Corp. v. Penny, 62 App. D. C. 268, 66 Fed. (2d) 794	12-201	District of Columbia v. Robinson, 30 App. D. C. 283	49-301
District Nat. Bank v. Trimble, 46 App. D. C. 319	16-1801	District of Columbia v. Roth, 18 App. D. C. 547	11-205
District Nat. Bank v. Washington Loan & Trust Co., 62 App. D. C. 198, 65 Fed. (2d) 831	28-124	District of Columbia v. R. P. Andrews Paper Co., 256 U. S. 582	7-901
District of Columbia v. American Oil Co., 59 App. D. C. 260, 39 Fed. (2d) 510	47-1902, 47-1903	District of Columbia v. Simpson, 40 App. D. C. 493	23-101
District of Columbia v. Bailey, 171 U. S. 161	1-218, 1-220, 16-1701	District of Columbia v. Simpson, 47 App. D. C. 6	33-301
District of Columbia v. Bailey, 57 App. D. C. 151, 18 Fed. (2d) 367	40-603, 40-605, 47-1915	District of Columbia v. Smith, 63 App. D. C. 363, 72 Fed. (2d) 735	4-405, 4-504
District of Columbia v. Ball, 22 App. D. C. 543	28-2406	District of Columbia v. Smith, 68 App. D. C. 104, 93 Fed. (2d) 650	40-603
District of Columbia v. Brooke, 214 U. S. 138	6-401, 6-404	District of Columbia v. Thompson, 281 U. S. 25	7-211, 11-703, 12-201
District of Columbia v. Burns, 32 App. D. C. 203	23-105	District of Columbia v. Tyrrell, 41 App. D. C. 463	1-101
District of Columbia v. Cahill, 60 App. D. C. 342, 54 Fed. (2d) 453	5-419, 5-422	District of Columbia v. Washington Market Co., 108 U. S. 243	10-137
District of Columbia v. Camden Iron Works, 181 U. S. 453	7-602	District of Columbia v. Washington Terminal Co., 47 App. D. C. 570	13-301
District of Columbia v. Clawans, 300 U. S. 617	11-616, 17-103, 47-2339, 47-2347	District of Columbia v. Wheeler, 57 App. D. C. 106, 17 Fed. (2d) 953	1-224, 40-602
District of Columbia v. Colts, 282 U. S. 63	11-616, 40-605	District of Columbia v. Wilcox, 4 App. D. C. 90	16-1201
District of Columbia v. Cranford Paving Co., 50 App. D. C. 300, 271 Fed. 374	7-601	District of Columbia v. Woodbury, 136 U. S. 450	1-102, 7-102, 22-3122
District of Columbia v. Dewalt, 31 App. D. C. 326	2-808	District of Columbia ex rel. Langellotti v. Fidelity & Deposit Co., 50 App. D. C. 309, 271 Fed. 383	24-415, 28-2405
District of Columbia v. Frazer, 21 App. D. C. 154	12-201, 13-301	Dobbins v. Thomas, 26 App. D. C. 157	30-208, 30-211
District of Columbia v. Fred, 281 U. S. 49	40-302, 40-303	Dobbins v. Thomas, 30 App. D. C. 511	30-208
District of Columbia v. Gant, 28 App. D. C. 186	23-105	Dodd v. Peak, 60 App. D. C. 68, 47 Fed. (2d) 430	11-601, 11-602, 11-616
District of Columbia v. Gardner, 54 App. D. C. 390, 298 Fed. 1005	31-114		



Dodge v. Freedman's Sav. & Trust Co., 106 U. S. 445	45-616	Earll v. Picken, 72 App. D. C. 91, 113 Fed. (2d) 150	28-2708
Doerschuck v. Mellon, 60 App. D. C. 383, 55 Fed. (2d) 741	13-108	Early v. Early, 49 App. D. C. 123, 261 Fed. 1003	14-306, 16-410, 16-419
Doherty v. Kalmbach, 66 App. D. C. 322, 87 Fed. (2d) 539	11-312, 11-1101	Easterday v. United States, 53 App. D. C. 387, 292 Fed. 664	22-1401, 23-203
Doleman v. Levine, 295 U. S. 221	16-1202, 18-704, 18-705, 18-708	Eastern Bldg. & Loan Assn. v. Olmsted, 16 App. D. C. 387	26-406
Donald v. United States, 70 App. D. C. 14, 102 Fed. (2d) 618	22-1504	Eastern Shore Shipbuilding Corp., In re, 274 Fed. 893	29-201, 29-203, 29-204
Donnelley v. United States, 276 U. S. 505	25-132	Ecker v. Potts, 72 App. D. C. 174, 112 Fed. (2d) 581	11-312, 11-504
Doremus v. National Cotton Impr. Co., 39 App. D. C. 295	13-103	Eckloff v. District of Columbia, 135 U. S. 240	4-119, 4-121
Dorsey v. Gotwals, 61 App. D. C. 41, 57 Fed. (2d) 407	5-401	Eclipse Bicycle Co. v. Farrow, 23 App. D. C. 411	16-106
Dorsey v. Peak, 58 App. D. C. 54, 24 Fed. (2d) 892	11-616, 40-301	Edwards v. Browlow, 50 App. D. C. 331, 271 Fed. 797	7-204
Dostal, Ex parte, 243 Fed. 664	39-401	Edwards v. Fox, 40 App. D. C. 439	28-402
Dougherty v. American Security & Trust Co., 59 App. D. C. 301, 40 Fed. (2d) 813	7-611, 47-1101	Edward Thompson Co. v. Thomas, 60 App. D. C. 118, 49 Fed. (2d) 500	11-723
Dougherty v. Galliher, 58 App. D. C. 166, 26 Fed. (2d) 538	7-117, 16-601	Egan v. United States, 52 App. D. C. 384, 287 Fed. 958	22-105, 22-701
Dougherty v. United States ex rel. Brown- ing, 60 App. D. C. 8, 45 Fed. (2d) 926	4-501, 4-505	Eggleston v. Wayland, 56 App. D. C. 77, 10 Fed. (2d) 642	45-302
Dougherty v. United States ex rel. Roberts, 58 App. D. C. 308, 30 Fed. (2d) 471	4-501, 4-507, 4-517	Eichberg v. United States Shipping Bd., 51 App. D. C. 44, 273 Fed. 886	16-102
Dowling v. Buckley, 27 App. D. C. 205	11-735	Eichelberger v. Symons, 53 App. D. C. 116, 288 Fed. 654	11-1501, 16-410, 16-417
Dowling v. United States, 41 App. D. C. 11	22-1202, 22-1401	Eisinger v. E. J. Murphy Co. 52 App. D. C. 197, 285 Fed. 931	28-121
Downey v. United States, 67 App. D. C. 192, 91 Fed. (2d) 223	11-315, 16-801	Electrical Workers Ben. Assn. v. Brown, 58 App. D. C. 203, 26 Fed. (2d) 981	35-901
Downs v. Downs, 23 App. D. C. 381	16-401	Elkins v. Elkins, 55 App. D. C. 9, 299 Fed. 690	16-413
Drake v. United States ex rel. Bates, 30 App. D. C. 312	35-101, 35-202, 35-1201	Elliott v. United States, 23 App. D. C. 456	11-305
Drazich v. Archer, 282 U. S. 893	11-1508	Ellis v. Ellis, 51 App. D. C. 383, 280 Fed. 457	14-302
Dreslin v. Phillips, 51 App. D. C. 324, 279 Fed. 303	11-743	Ellison v. Splain, 49 App. D. C. 99, 261 Fed. 247	23-401
Droop v. Ridenour, 11 App. D. C. 224	14-402	El Paso & N. E. R. Co. v. Gutierrez, 215 U. S. 87	44-401
Drum v. Benton, 13 App. D. C. 245	35-901	Emack v. Campbell, 14 App. D. C. 186	16-1302, 38-110
Duehay v. Acacia Mut. Life Ins. Co., 70 App. D. C. 245, 105 Fed. (2d) 768	11-512, 18-501, 18-520, 20-505	Emack v. Rushenberger, 8 App. D. C. 249	38-110, 38-122
Dugan v. Northcutt, 7 App. D. C. 351	17-101, 19-301, 19-312	Emery v. Emery, 45 App. D. C. 576	11-504
Dulany v. Morse, 39 App. D. C. 523	45-501, 45-601	Employers Liability Assur. Corp. v. Hoage, 63 App. D. C. 53, 69 Fed. (2d) 227	36-501
Duncanson v. Manson, 3 App. D. C. 260	18-607, 18-612	Employer's Liability Assur. Corp. v. Hoage, 67 App. D. C. 245, 91 Fed. (2d) 318	36-501
Dunigan, D. J., Inc. v. District of Columbia, 59 App. D. C. 384, 44 Fed. (2d) 892	1-228	Engle v. United States, 48 App. D. C. 466	22-1301
Dunn v. O'Connor, 67 App. D. C. 76, 89 Fed. (2d) 820	26-101, 26-301, 26-308, 26-322, 29-215	Equitable Surety Co. v. United States ex rel. McMillan, 234 U. S. 448	1-804
Dunning v. Harrah, 65 App. D. C. 92, 80 Fed. (2d) 535	11-201, 17-101	Equitable Trust Co. v. Denver & R. G. R. Co. 250 Fed. 327	17-101
Dunnington v. Dunnington, 45 App. D. C. 277	16-410	Evans v. Evans, 60 App. D. C. 371, 55 Fed. (2d) 533	18-211, 18-703
Durant v. Murdock, 3 App. D. C. 114	12-201, 16-1901	Evans v. Humphreys, 9 App. D. C. 392	11-320
Dutton v. Parish, 34 App. D. C. 393	15-101	Evans v. Neumann, 51 App. D. C. 300, 278 Fed. 1013	30-101
		Evans v. United States, 30 App. D. C. 58	23-105
		Evans v. United States, 31 App. D. C. 544	22-1601
		Ewald v. Lane, 70 App. D. C. 89, 104 Fed. (2d) 222	22-2304, 30-208
		Ewing v. United States ex rel. Fowler Car. Co., 45 App. D. C. 185	16-1001



## F

Fall v. United States, 60 App. D. C. 124, 49 Fed. (2d) 506	11-1418	First Nat. Bank, Ex parte, 223 U. S. 516	11-205
Fardon v. Washington Loan & Trust Co., 44 App. D. C. 69	19-304, 19-309	Fischer v. Munsey Trust Co., 44 App. D. C. 212	11-317
Farnsworth v. Zerbst, 98 Fed. (2d) 541	24-203	Fishel v. Kite, 69 App. D. C. 360, 101 Fed. (2d) 685	15-201, 15-301, 15-303
Farr v. Palmer, 24 App. D. C. 234	23-401	Fisher, V. G., Art Co., v. Huchins, 41 App. D. C. 156	42-101
Faulks v. Schrider, 69 App. D. C. 137, 99 Fed. (2d) 370	1-605, 1-614, 7-214, 45-101	Fitzgerald v. Wiley, 22 App. D. C. 329	16-1901
Faunce v. Woods, 55 App. D. C. 330, 5 Fed. (2d) 753	12-302, 14-302	Fitzgerald v. Wynne, 1 App. D. C. 107	11-503, 45-501
Fay v. Macfarland, 32 App. D. C. 295	7-204	Fitzhugh v. District of Columbia, 71 App. D. C. 290, 109 Fed. (2d) 837	21-304, 21-306, 21-318, 21-319, 32-401, 32-406
Fazio v. Cardillo, 71 App. D. C. 264, 109 Fed. (2d) 835	36-501	Flaherty v. Columbus, 41 App. D. C. 525	45-816
Fearson v. United States, 10 App. D. C. 536	22-2401	Flannery v. Maine Red Granite Co., 3 App. D. C. 395	12-305
Fedarwisch v. Alsop, 18 App. D. C. 318	16-1901	Fleming v. Capital Trac. Co., 40 App. D. C. 489	16-1202, 16-1203
Federal Intermediate Credit Bank v. Mitchell, 38 Fed. (2d) 824	11-1512	Fletcher v. Coomes, 52 App. D. C. 159, 285 Fed. 893	11-1501, 11-1502, 16-1301
Federal Trade Comm. v. Klesner, 274 U. S. 145	11-305, 11-324, 17-101	Fletcher v. Kellogg, 55 App. D. C. 97, 2 Fed. (2d) 315	15-201
Federal Trade Comm. v. Millers Nat. Federation, 57 App. D. C. 360, 23 Fed. (2d) 968	11-306	Fletcher v. United States, 42 App. D. C. 53	11-1407, 22-107, 22-2304, 22-2501
Ferguson v. Dent, 46 Fed. 88	11-1509	Fletcher v. Wheat, 69 App. D. C. 259, 100 Fed. (2d) 432	11-305, 11-1302
Ferguson v. District of Columbia, 270 U. S. 633	17-103	Flynn v. Potomac Elec. Power Co., 60 App. D. C. 82, 47 Fed. (2d) 978	15-304, 16-303, 16-317
Ferguson v. Washington & R. G. Co., 6 App. D. C. 525	16-1202	Foley, Ex parte, 243 Fed. 470	39-401
Ferguson Contracting Co. v. Coal & Coke R. Co., 33 App. D. C. 159	13-103	Follansbee v. Follansbee, 1 App. D. C. 326	18-202, 30-216
Feucht v. Keller, 70 App. D. C. 117, 104 Fed. (2d) 250	12-201	Fontano v. Robbins, 18 App. D. C. 402	16-1701
Fidelity & Casualty Co. v. Burris, 61 App. D. C. 228, 59 Fed. (2d) 1042	36-501	Ford v. Ford, 27 App. D. C. 401	45-402
Fidelity & Deposit Co. v. Hurley, 63 App. D. C. 377, 72 Fed. (2d) 927	16-311	Forrester v. Jerman, 67 App. D. C. 167, 90 Fed. (2d) 412	40-403
Fidelity & Deposit Co. v. Shepherd, 56 App. D. C. 117, 11 Fed. (2d) 563	16-311	Forster v. Eliot, 52 App. D. C. 107, 282 Fed. 735	45-820
Fidelity Sav. Co. v. Fawcett, 57 App. D. C. 285, 22 Fed. (2d) 591	15-401	Forte v. United States, 65 App. D. C. 355, 83 Fed. (2d) 612	22-1501, 22-1504
Fidelity Sav. Co. v. Security Sav. & Commercial Bank, 55 App. D. C. 180, 3 Fed. (2d) 351	16-303, 16-317	Foster v. Goldsoll, 48 App. D. C. 505	22-1301, 23-401
Fidelity Storage Co. v. Jaques, 61 App. D. C. 337, 62 Fed. (2d) 876	17-101	Fowler v. Koehler, 43 App. D. C. 349	1-625
Fidelity Storage Co. v. Kingsbury, 64 App. D. C. 208, 76 Fed. (2d) 978	28-1803, 28-2006	Fowler v. Rapley, 15 Wall. (82 U. S.) 328	45-915
Fidelity Storage Co. v. Reliable Stores Corp., 63 App. D. C. 83, 69 Fed. (2d) 569	28-1921, 28-1922, 42-103	Fowler v. Saks, 7 Mackey (18 D. C.) 570	1-625
Fidelity Storage Corp. v. Trussed Concrete Steel Co., 35 App. D. C. 1	38-101, 38-102	Fox v. Johnson (D. C.-D. C.), 31 Fed. Supp. 64	29-204
Fields v. Gwynn, 19 App. D. C. 99	45-812	France v. Coleman, 29 App. D. C. 386	16-102
Fields v. United States, 27 App. D. C. 433	11-320, 22-1210, 29-701	Freeman v. Pew, 61 App. D. C. 223, 59 Fed. (2d) 1037	12-201
Fifth Congregational Church v. Bright, 28 App. D. C. 229	28-801	Frend v. United States, 69 App. D. C. 281, 100 Fed. (2d) 691	22-105
Fillipone v. United States, 55 App. D. C. 126, 2 Fed. (2d) 928	11-907	Frey v. Allen, 9 App. D. C. 400	18-215
Finney v. Pennsylvania Iron Works Co., 22 App. D. C. 476	13-203	Frey v. Frey, 61 App. D. C. 232, 59 Fed. (2d) 1046	16-403, 16-406, 30-101
First Nat. Bank v. Fox, 40 App. D. C. 430	28-205	Friedenwald v. Friedenwald, 57 App. D. C. 13, 16 Fed. (2d) 509	16-410
First Nat. Bank v. United States (D. C.-D. C.), 30 Fed. Supp. 730	21-115, 21-116	Friedlander v. Rapley, 38 App. D. C. 208	13-208, 22-1301
		Frisby v. United States, 35 App. D. C. 513	22-1401
		Frisby v. United States, 38 App. D. C. 22	22-1401
		Frizzell v. Murphy, 19 App. D. C. 440	11-318, 11-320
		Frizzell v. United States, 55 App. D. C. 103, 2 Fed. (2d) 398	11-907
		Fuller v. United States, 53 App. D. C. 88, 288 Fed. 442	22-1401



Fulton v. Hoage, 64 App. D. C. 232, 77 Fed. (2d) 110	36-501
Fulton v. United States, 45 App. D. C. 27	22-1202, 23-201
G	
Gallen, In re (D. C.-D. C.), 18 Fed. Supp. 683	21-126
Galloway v. Bell, 56 App. D. C. 172, 11 Fed. (2d) 558	43-301, 43-323
Galt v. Todd, 5 App. D. C. 350	15-101, 15-204
Gambill v. Aderhold, 4 Fed. Supp. 567	22-2601
Gannon v. Manning, 42 App. D. C. 206	12-305
Garden City Feeder Co. v. Com. Int. Rev., 75 Fed. (2d) 804	14-103
Garnett v. United States, 11 Wall. (78 U. S.) 256	11-316
Garrett v. Garrett, 61 App. D. C. 309, 62 Fed. (2d) 471	16-413
Garrity v. District of Columbia, 66 App. D. C. 256, 86 Fed. (2d) 207	5-412
Gassenheimer v. District of Columbia, 6 App. D. C. 108	11-301, 11-602
Gassenheimer v. United States, 26 App. D. C. 432	22-1202, 22-1203, 22-1204
Geist v. United States, 26 App. D. C. 594	22-1301
General Broadcasting System v. Bridgeport Broadcasting Station, 53 Fed. (2d) 664	11-208
General Credit v. Universal Credit Co., 69 App. D. C. 80, 99 Fed. (2d) 115	28-1207
General Elec. Co. v. District of Columbia, 71 App. D. C. 321, 110 Fed. (2d) 261	47-2406
George v. Capital Trac. Co., 54 App. D. C. 144, 295 Fed. 965	17-104
Georgetown College v. Stone, 61 App. D. C. 200, 59 Fed. (2d) 875	36-501
George Washington University v. Riggs Nat. Bank, 66 App. D. C. 389, 88 Fed. (2d) 771	19-110
Georgia Casualty Co. v. Hoage, 61 App. D. C. 195, 59 Fed. (2d) 870	36-501
German Soc. v. Prospect Hill Cemetery, 2 App. D. C. 310	13-301
Gibson v. Gibson, 53 App. D. C. 380, 292 Fed. 657	18-215
Gilbert v. Washington Benefit Assn., 21 App. D. C. 344	16-102
Gilbert v. Washington Beneficial Endowment Assn., 10 App. D. C. 316	17-101, 29-211
Gill v. Kahl-Holt Co., 47 App. D. C. 53	42-103
Gillem v. Carusi, 59 App. D. C. 46, 32 Fed. (2d) 942	31-114
Ginder v. Guiffrida, 61 App. D. C. 338, 62 Fed. (2d) 877	11-724, 15-103
Glenn v. Sothoron, 4 App. D. C. 125	12-201
	18-612, 29-211
Glennan v. Glennan, 3 App. D. C. 333	16-419
Glennan v. Lincoln Inv. Corp., 71 App. D. C. 365, 110 Fed. (2d) 130	12-201, 12-305
Globe Indemnity Co. v. United States, 291 U. S. 476	1-804
Glover v. Patten, 165 U. S. 394	18-518, 19-109
Goff v. United States, 22 App. D. C. 512	28-2406
Goldsmith v. Clabaugh, 55 App. D. C. 346, 6 Fed. (2d) 94	2-906
Goldsmith v. Valentine, 35 App. D. C. 299	17-101

Goldwyn Distributing Corp. v. Carroll, 51 App. D. C. 75, 276 Fed. 63	5-301
Golf, Inc. v. District of Columbia, 62 App. D. C. 309, 67 Fed. (2d) 575	5-412, 5-422
Gompers v. Buck's Stove & Range Co., 221 U. S. 418	17-101
Gompers v. United States, 233 U. S. 604	17-101, 49-301
Gonzales v. United States, 40 App. D. C. 450	24-301
Goodacre v. Shulmier, 64 App. D. C. 10, 73 Fed. (2d) 519	12-201
Goodale v. Splain, 42 App. D. C. 235	23-401
Goode v. United States, 44 App. D. C. 162	11-317, 11-318
Goodloe v. Hawk, 72 App. D. C. 287, 113 Fed. (2d) 753	30-101
Goodman v. Wren, 34 App. D. C. 516	16-1301
Gordon v. United States, 53 App. D. C. 154, 289 Fed. 552	14-305
Gotwals v. Miller, 61 App. D. C. 402, 59 Fed. (2d) 1051	7-611
Gould v. Com. Int. Rev., 21 B. T. A. 824	29-216
Gracie v. American Security & Trust Co., 51 App. D. C. 141, 277 Fed. 543	11-325, 11-503, 11-504, 13-215, 19-301, 19-304, 19-307
Grafton v. Paine, 7 App. D. C. 257	16-102
Graham v. Fitch, 13 App. D. C. 569	13-108, 16-301
Grant v. United States, 28 App. D. C. 169	22-2401
Gray v. District of Columbia, 1 App. D. C. 20	28-2701
Gray v. Ward, 45 App. D. C. 498	11-703
Great A. & P. Tea Co. v. District of Columbia, 67 App. D. C. 30, 89 Fed. (2d) 502	10-107, 10-134, 11-1420
Green v. Brophy, 71 App. D. C. 299, 110 Fed. (2d) 539	13-108
Green v. Elbert, 137 U. S. 615	11-1507
Green v. Gordon, 38 App. D. C. 443	45-812
Green v. Higgin Mfg. Co., 44 App. D. C. 186	28-721
Green v. Mann, 19 App. D. C. 243	11-743, 15-204
Green v. McIntire, 42 App. D. C. 250	1-101, 11-735
Green v. Peak, 62 App. D. C. 176, 65 Fed. (2d) 809	11-616
Green v. Reeves, 47 App. D. C. 83	12-305
Green v. United States, 25 App. D. C. 549	22-1206
Green v. United States, 40 App. D. C. 426	22-2801
Griffin v. Metropolitan Life Ins. Co., 36 App. D. C. 8	35-203
Griffith v. Rudolph, 54 App. D. C. 350, 298 Fed. 672	35-101
Griffith v. Slaybaugh, 58 App. D. C. 237, 29 Fed. (2d) 437	40-603
Griffith v. Stewart, 31 App. D. C. 29	20-501, 20-505
Grinnage's Estate, In re, 69 App. D. C. 370, 101 Fed. (2d) 695	20-201
Groff v. Groff, 36 App. D. C. 560	14-501
Groff v. Miller, 20 App. D. C. 353	30-103
Groff v. Miller, 30 W. L. R. 434	17-101
Groo v. Norman, 42 App. D. C. 387	29-201
Group Health Assn. v. Moor, (D. C.-D. C.), 24 Fed. Supp. 445	29-601, 35-202
Gulford Granite Co. v. Harrison Granite Co., 23 App. D. C. 1	13-103



Guthrie v. Welch, 24 App. D. C. 562 11-503,  
11-504, 11-513, 20-504  
Gwin v. Brown, 21 App. D. C. 295 12-201, 16-1501

## H

Halback v. Hill, 49 App. D. C. 127, 261 Fed.  
1007 14-301, 14-306, 14-307  
Hale v. United States, 67 Fed. (2d) 673 22-2601  
Haliday v. Haliday, 56 App. D. C. 179, 11 Fed.  
(2d) 565 12-303  
Hall v. Chicago, R. I. & P. R. Co., 149 Fed.  
564 44-401—44-403  
Hall v. District of Columbia, 47 App. D. C.  
552 12-201  
Hall v. Louisville & N. R. Co., 157 Fed. 464 44-401  
Halls Safe Co. v. Herring-Hall-Marvin Safe  
Co., 31 App. D. C. 498 1-501  
Hamilton v. Bergling, 66 App. D. C. 83, 85  
Fed. (2d) 249 26-101, 26-104  
Hamilton v. Offutt, 64 App. D. C. 385, 78  
Fed. (2d) 735 26-101, 26-103, 26-313, 26-322  
Hamilton v. Rathbone, 9 App. D. C. 43 14-501  
Hamilton v. Shillington, 19 App. D. C. 268 11-504  
Hamilton v. United States, 26 App. D. C. 382 22-2401  
Hamilton v. United States, 41 App. D. C.  
359 22-3001  
Hammerer v. Huff, 71 App. D. C. 246, 110  
Fed. (2d) 113 16-301, 24-205, 24-206  
Hanback v. Dutch Baker Boy, Inc., 70 App.  
D. C. 398, 107 Fed. (2d) 203 28-1115,  
28-1507, 28-1601, 33-101  
Handel v. Lane, 45 App. D. C. 389 16-1001  
Hannan v. Hardee, 63 App. D. C. 76, 79, 69  
Fed. (2d) 394, 397 28-507  
Hard v. Splain, 45 App. D. C. 1 22-2101, 23-401  
Hardebeck v. Hamilton, 50 App. D. C. 113,  
268 Fed. 703 45-906  
Harding v. Aaronson, 63 App. D. C. 107, 69  
Fed. (2d) 845 12-401, 30-207  
Harlow, Ex parte, 3 App. D. C. 203 17-101  
Harper v. Cunningham, 8 App. D. C. 430 15-106  
Harper v. Galliher & Huguey, 58 App. D. C.  
252, 29 Fed. (2d) 452 38-102, 38-105, 38-110  
Harper v. Moran, 64 App. D. C. 210, 76 Fed.  
(2d) 980 26-101  
Harriman v. Richardson, 51 App. D. C. 24,  
273 Fed. 752 16-301, 16-302, 16-308  
Harris v. American R. Exp. Co., 56 App.  
D. C. 264, 12 Fed. (2d) 487 13-103  
Harris v. Embrey, 70 App. D. C. 232, 105 Fed.  
(2d) 111 16-1201, 16-1202  
Harris v. Harris, 67 App. D. C. 85, 89 Fed.  
(2d) 829 16-412  
Harris v. Hoage, 62 App. D. C. 275, 66 Fed.  
(2d) 801 36-501  
Harris v. Lang, 27 App. D. C. 84 11-616,  
24-401, 24-405  
Harris v. Leonhardt, 2 App. D. C. 318 13-401, 16-901  
Harris v. Nixon, 27 App. D. C. 94 11-609,  
11-616, 24-401  
Harris v. United States, 50 App. D. C. 139,  
269 Fed. 481 22-2801  
Harrison v. Moyer, 224 Fed. 224 11-316, 22-107  
Harrod v. United States, 58 App. D. C. 254,  
29 Fed. (2d) 454 22-201

Hart v. Hines, 10 App. D. C. 366 15-201  
Hart v. United States, 70 App. D. C. 269,  
105 Fed. (2d) 792 22-201  
Hartford Acc. & Indem. Co. v. Cardillo, 71  
App. D. C. 330, 112 Fed. (2d) 11 36-501  
Hartford Acc. & Indem. Co. v. Hoage, 66  
App. D. C. 154, 85 Fed. (2d) 411 36-501  
Hartford Acc. & Indem. Co. v. Hoage, 66 App.  
D. C. 160, 85 Fed. (2d) 417 36-501  
Hartford Acc. & Indem. Co. v. Hoage, 66  
App. D. C. 163, 85 Fed. (2d) 420 36-501  
Hartman v. Masters, 46 App. D. C. 271 17-101  
Hartman v. Masters, 57 App. D. C. 196, 19  
Fed. (2d) 670 17-101  
Hartranft v. Mulloony, 247 U. S. 295 11-315, 17-101  
Hartranft v. Mulloony, 43 App. D. C. 44 24-401  
Harwood v. United States Shipping Bd.  
Emergency Fleet Corp., 26 Fed. (2d) 116 29-201  
Hasler v. Williams, 34 App. D. C. 319 16-1301,  
16-1302 45-812  
Hauptman v. Carpenter, 16 App. D. C. 524 45-812  
Haviland v. Harriss, 60 App. D. C. 255, 50  
Fed. (2d) 1069 20-105, 20-206  
Hawkins v. United States, 59 App. D. C. 249,  
39 Fed. (2d) 294 14-305  
Hawley v. Hawley, 72 App. D. C. 357, 114  
Fed. (2d) 505 11-512, 11-514  
Hayden v. Filippone, 51 App. D. C. 246, 278  
Fed. 329 45-904  
Hayden v. International Banking Corp., 59  
App. D. C. 313, 41 Fed. (2d) 107 12-305  
Hayes v. Burns, 25 App. D. C. 243 16-1602  
Hayes v. Conger, 36 App. D. C. 202 16-301, 17-101  
Hayes v. Palmer, 21 App. D. C. 450 23-401  
Hazard v. Blessing, 55 App. D. C. 114, 2 Fed.  
(2d) 916 5-422, 47-405  
Hazen v. Chambers, 71 App. D. C. 220, 108  
Fed. (2d) 741 47-2331  
Hazen v. Hardee, 64 App. D. C. 346, 78 Fed.  
(2d) 230 47-1208, 47-1209  
Hazen v. Hawley, 66 App. D. C. 266, 86 Fed.  
(2d) 217 5-412  
Hazen v. National Rifle Assn., 69 App. D. C.  
339, 101 Fed. (2d) 432 47-802,  
47-1205, 47-1207, 47-1209  
Hazen v. Van Senden, 43 App. D. C. 161 28-406,  
28-409  
Hazen v. Washington R. & E. Co., 64 App.  
D. C. 57, 74 Fed. (2d) 461 7-505  
Heald v. District of Columbia, 254 U. S. 20 47-1207  
Heald v. District of Columbia, 259 U. S. 114 47-1205,  
47-1207  
Heald v. District of Columbia, 50 App. D. C.  
231, 269 Fed. 1015 47-1207  
Healey v. Maroney, 34 App. D. C. 99 17-101  
Heath, In re, 144 U. S. 92 11-305, 11-316  
Hein, In re, 166 U. S. 432 11-205  
Heiskell v. Mozie, 65 App. D. C. 255, 82 Fed.  
(2d) 861 11-735  
Helvestine v. Helvestine, 67 App. D. C. 121,  
89 Fed. (2d) 970 16-403  
Henderson v. Mann, 47 App. D. C. 174 16-1501  
Hengesbach v. Hengesbach, — App. D. C. —,  
114 Fed. (2d) 845 11-504



Henry v. Fraser, 58 App. D. C. 260, 29 Fed. (2d) 633	19-103	Holt v. Holt, 64 App. D. C. 280, 77 Fed. (2d) 538	16-403
Henry v. United States, 49 App. D. C. 207, 263 Fed. 459	22-1202	Holtzman v. Douglas, 168 U. S. 278	16-505, 16-515
Henry v. United States, 50 App. D. C. 366, 273 Fed. 330	22-1202, 22-2203	Holtzman v. Douglas, 5 App. D. C. 397	16-1501
Herald v. United States, 52 App. D. C. 147, 284 Fed. 927	1-101, 22-1601	Hopkins v. Grimshaw, 165 U. S. 342	14-301, 14-306, 45-102
Herfurth, H., Jr., Inc. v. United States, 66 App. D. C. 220, 85 Fed. (2d) 719	1-804	Hopkins v. United States, 4 App. D. C. 430	22-2401
Herrell v. Donovan, 7 App. D. C. 322	38-103	Hornblower v. George Washington University, 31 App. D. C. 64	12-201, 12-305, 16-1901
Herrell v. Herrell, 47 App. D. C. 30	45-205	Horning v. District of Columbia, 254 U. S. 135	26-601
Herson v. United States, 65 App. D. C. 86, 80 Fed. (2d) 529	23-301	Hornor v. Henning, 93 U. S. 228	29-204
Hevner v. Matthews, 4 App. D. C. 380	45-401	Horton v. United States, 15 App. D. C. 310	22-2401
Hieston v. National City Bank, 51 App. D. C. 394, 280 Fed. 525	30-207	Hoskins v. Dickerson, 239 Fed. 275	39-401
Higgins v. Central Cigar Co., 59 App. D. C. 9, 32 Fed. (2d) 400	42-103	Houston v. Ormes, 252 U. S. 469	13-108
Hight v. McCoy, 46 App. D. C. 238	16-1001	Howard v. Chesapeake & O. R. Co., 11 App. D. C. 300	13-103
Hight v. Richmond Park Imp. Co., 47 App. D. C. 518	29-201	Howard v. Howard, 38 App. D. C. 575	11-504, 18-406, 20-610
Hill v. Dorsey, 57 App. D. C. 305, 22 Fed. (2d) 1003	23-401	Howard v. Howard, 72 App. D. C. 145, 112 Fed. (2d) 44	16-415
Hill v. Raymond, 65 App. D. C. 144, 81 Fed. (2d) 278	1-228, 5-301, 5-302	Howard v. Illinois Cent. R. Co., 207 U. S. 463	44-401, 44-402
Hill v. United States, 22 App. D. C. 395	22-2401	Howard v. Illinois Cent. R. Co., 148 Fed. 997	44-401
Hines v. Paregol, 64 App. D. C. 306, 77 Fed. (2d) 953	21-126	Howard v. Trust Co., 12 App. D. C. 222	16-301
Hirsh v. Block, 50 App. D. C. 56, 267 Fed. 614	45-906	Howard v. United States, 58 App. D. C. 179, 26 Fed. (2d) 551	11-1418
Hitchcock v. Hitchcock, 15 App. D. C. 81	16-403	Howe v. United States, 61 App. D. C. 8, 56 Fed. (2d) 305	22-1301
Hitz v. Jenks, 123 U. S. 297	30-216, 45-402	Howell v. Commercial Nat. Bank, 40 App. D. C. 370	28-406
Hitz v. National Metropolitan Bank, 111 U. S. 722	45-501	Howerton v. District of Columbia, 53 App. D. C. 230, 289 Fed. 628	2-711
Hoage v. Hartford Acc. & Indem. Co., 64 App. D. C. 258, 77 Fed. (2d) 381	36-501, 36-502	Howgate v. United States, 3 App. D. C. 277	28-2406
Hoage v. Liberty Mut. Ins. Co., 64 App. D. C. 395, 78 Fed. (2d) 874	36-501	Howison v. Masson, 29 App. D. C. 338	16-1501
Hoage v. Murch Bros. Constr. Co., 60 App. D. C. 218, 50 Fed. (2d) 983	16-401, 30-101	Huffines v. American Security & Trust Co., 63 App. D. C. 224, 71 Fed. (2d) 345	45-616
Hoage v. Royal Indem. Co., 67 App. D. C. 142, 90 Fed. (2d) 387	36-501	Hughes v. President and Directors of Georgetown College, (D. C.-D. C.), 33 Fed. Supp. 867	32-301
Hoage v. Terminal Refrigerating & Warehousing Co., 65 App. D. C. 5, 78 Fed. (2d) 1009	36-501	Hume v. Riggs, 12 App. D. C. 355	45-915
Hockman v. Shreve, 50 App. D. C. 140, 269 Fed. 482	45-906	Hunt v. District of Columbia, 71 App. D. C. 143, 108 Fed. (2d) 10	47-713, 47-1203, 47-1206, 47-1213, 47-2404, 47-2406
Hoffman v. F. H. Duehay, Inc., 62 App. D. C. 206, 65 Fed. (2d) 839	45-106	Huntington v. National Sav. Bank, 96 U. S. 388	26-101
Hoffman v. Washington-Virginia R. Co., 44 App. D. C. 418	13-103	Hurdle v. American Sec. & Tr. Co., 59 App. D. C. 58, 32 Fed. (2d) 954	12-201
Hogan v. Kurtz, 94 U. S. 773	16-501	Hurley v. United States ex rel. Gladman, 60 App. D. C. 69, 47 Fed. (2d) 431	39-212
Hoglund v. Lane, 44 App. D. C. 310	16-1001	Hutchins v. Dante, 40 App. D. C. 262	18-720, 20-403
Holden v. Matteson, 38 App. D. C. 128	16-417, 16-419	Hutchins v. Hutchins, 40 App. D. C. 180	17-101, 19-312
Holden v. United States, 24 App. D. C. 318	22-1703	Hutchins v. Hutchins, 41 App. D. C. 122	18-720, 20-403
Holley v. Smalley, 50 App. D. C. 178, 269 Fed. 694	28-201	Hutchins v. Hutchins, 41 App. D. C. 367	14-201, 14-203, 19-306
Hollis v. Kutz, 255 U. S. 452	43-411, 43-704	Hutchins v. Hutchins, 48 App. D. C. 286	11-504, 11-518, 20-605
Hollis v. Kutz, 49 App. D. C. 301, 265 Fed. 451	43-408	Hutchins v. Hutchins, 48 App. D. C. 495	14-308
Holmes v. United States, 50 App. D. C. 147, 269 Fed. 489	22-2713	Hutchins v. Hutchins, 49 App. D. C. 118, 261 Fed. 460	11-504, 19-307
Holmes v. United States, 56 App. D. C. 183, 11 Fed. (2d) 569	1-224	Hutchins v. Langley, 27 App. D. C. 234	28-118, 28-406
		Hutchins v. Munn, 28 App. D. C. 271	16-102



Hutchins Mut. Ins. Co. v. Hazen, 70 App. D. C. 174, 105 Fed. (2d) 53 35-102, 35-103, 35-202, 35-1104, 35-1201  
 Hutchinson v. Brown, 8 App. D. C. 157 28-2501  
 Huyler's v. Houston, 41 App. D. C. 452 11-602  
 Huysman v. Evening Star, 12 App. D. C. 586 12-201  
 Hyde v. Shine, 199 U. S. 62 11-305  
 Hyde v. Southern R. Co., 31 App. D. C. 466 16-1201  
 Hyde v. United States, 35 App. D. C. 451 11-1407  
 Hysler v. United States, 86 Fed. (2d) 918 23-301

## I

Iglehart v. Iglehart, 204 U. S. 478 27-113, 45-102  
 Iglehart v. Iglehart, 26 App. D. C. 209 45-102  
 Ingram Day Lbr. Co. v. United States Shipping Bd. Emergency Fleet Corp., 267 Fed. 283 29-201, 29-203  
 International Exch. Bank v. Pullo, 52 App. D. C. 199, 285 Fed. 933 13-214, 13-216  
 International Finance Corp. v. General Motors Acceptance Corp., 63 App. D. C. 325, 72 Fed. (2d) 376 11-317, 11-318  
 International Finance Corp. v. Jawish, 63 App. D. C. 262, 71 Fed. (2d) 985 15-204, 15-305, 16-312  
 International Finance Corp. v. Peoples Bank, 27 Fed. (2d) 523 28-402  
 International Seal Co. v. Beyer, 33 App. D. C. 172 16-303, 16-323  
 Irwin v. United States, 67 App. D. C. 41, 89 Fed. (2d) 678 23-301  
 Isojoki, Ex parte, 222 Fed. 151 22-1001

## J

Jackson v. Clifford, 5 App. D. C. 312 29-213  
 Jackson v. Emmons, 25 App. D. C. 146 12-201  
 Jackson v. Finance Corp., 59 App. D. C. 309, 41 Fed. (2d) 103 16-314  
 Jackson v. Smith, 254 U. S. 536 45-603, 45-617  
 Jackson v. Snyder, 54 App. D. C. 23, 293 Fed. 842 23-401  
 Jackson v. United States, 48 App. D. C. 272 22-2401  
 Jackson v. United States, 58 App. D. C. 125, 25 Fed. (2d) 549 22-2801, 24-301  
 Jacobi v. Jacobi, 45 App. D. C. 442 16-410  
 Janes v. Janes, 51 App. D. C. 267, 278 Fed. 576 14-302  
 Jarman v. United States, 92 Fed. (2d) 309 24-201  
 Jaselli v. Riggs Nat. Bank, 36 App. D. C. 159 28-102  
 Jefferson v. District of Columbia, 40 App. D. C. 381 1-101, 17-103  
 Jenkins v. Purcell, 29 App. D. C. 209 16-308  
 Jerman v. Edwards, 29 App. D. C. 535 28-301, 28-319  
 Jett v. Montague Mfg. Co., 61 App. D. C. 277, 61 Fed. (2d) 918 30-208  
 Joerns v. Irvin, 72 App. D. C. 170, 114 Fed. (2d) 458 11-322  
 John v. Splain, 50 App. D. C. 201, 269 Fed. 717 23-401  
 Johns v. Herbert, 2 App. D. C. 485 20-501  
 Johnson v. Aderhold, 73 Fed. (2d) 102 22-503, 22-2901  
 Johnson v. District Court, 30 App. D. C. 520 49-302

Johnson v. Hazen, 69 App. D. C. 151, 99 Fed. (2d) 384 7-209, 7-221, 16-607  
 Johnson v. Newton, 58 App. D. C. 118, 25 Fed. (2d) 542 14-104  
 Johnson v. Nickoloff, 52 Fed. (2d) 1074 11-1508  
 Johnson v. Reichelderfer, 60 App. D. C. 186, 50 Fed. (2d) 336 16-601, 16-606, 47-605  
 Johnson v. Reichelderfer, 62 App. D. C. 237, 66 Fed. (2d) 217 7-219, 16-601  
 Johnson v. Rudolph, 57 App. D. C. 29, 16 Fed. (2d) 525 7-611, 43-1511, 47-703, 47-1101  
 Johnson v. Simmons, 53 App. D. C. 356, 290 Fed. 331 1-625, 11-703  
 Johnson v. Thomas, 23 App. D. C. 141 16-515, 16-1501  
 Johnson v. United States, 225 U. S. 405 22-2404  
 Johnson v. United States, 26 App. D. C. 128 22-2501  
 Johnson v. United States, 38 App. D. C. 347 22-2401, 49-301  
 Johnson v. Washington Loan & Trust Co., 33 App. D. C. 242 45-812  
 Johnston v. Johnston, 64 App. D. C. 87, 74 Fed. (2d) 774 13-108, 16-410  
 Jones v. District of Columbia, 51 App. D. C. 319, 279 Fed. 188 1-902  
 Jones v. Jones, 63 App. D. C. 373, 72 Fed. (2d) 829 18-722, 19-101, 21-129, 30-111, 30-201, 36-103  
 Jones v. King, 72 App. D. C. 257, 113 Fed. (2d) 522 40-403  
 Jones v. Rutherford, 26 App. D. C. 114 13-108  
 Jones v. United States, 53 App. D. C. 138, 289 Fed. 536 22-2201  
 Jordan v. American Security & Trust Co., 38 App. D. C. 391 18-214  
 Jordan v. Group Health Assn., 71 App. D. C. 38, 107 Fed. (2d) 239 29-601, 29-602, 35-102, 35-103, 35-105, 35-108, 35-202, 47-1801, 47-1808  
 Jordan v. Landram, 35 App. D. C. 89 13-108, 16-301, 16-313  
 Jordan v. O'Brien, 33 App. D. C. 189 16-1301  
 Jordon v. United States, 66 App. D. C. 309, 87 Fed. (2d) 64 22-2401, 22-2403  
 Junghans v. Junghans, 72 App. D. C. 129, 112 Fed. (2d) 212 16-413

## K

Kalbfus v. Siddons, 42 App. D. C. 310 16-1001  
 Kane v. Paul, 14 Pet. (39 U. S.) 33 20-505  
 Kaplan v. Manhattan Life Ins. Co., 71 App. D. C. 250, 109 Fed. (2d) 463 12-201, 14-308, 35-414  
 Karrick v. Edes, 57 App. D. C. 219, 19 Fed. (2d) 693 11-327  
 Karrick v. Landon, 41 App. D. C. 416 19-307, 19-309  
 Karrick v. Wetmore, 22 App. D. C. 487 13-301  
 Kavakos v. Equitable Life Assur. Soc., 66 App. D. C. 380, 88 Fed. (2d) 762 14-308  
 Keane v. Chamberlain, 14 App. D. C. 84 28-2601  
 Keehn v. United States, 300 Fed. 493 25-132  
 Keely v. Moore, 196 U. S. 38 19-103  
 Keely v. Moore, 22 App. D. C. 9 19-101, 19-305  
 Kelleher v. United States, 59 App. D. C. 107, 35 Fed. (2d) 877 22-1504, 22-1505, 22-1508, 24-401



Keller v. Potomac Elec. Power Co., 261 U. S. 428	43-704, 43-705	Lane v. Duncan Townsite Co., 44 App. D. C. 63	16-1001
Kelley v. Great Northern R. Co., 152 Fed. 211	44-402	Laney v. United States, 54 App. D. C. 56, 294 Fed. 412	27-118, 27-128
Kelly v. Moore, 22 App. D. C. 1	11-320, 17-101	Langley v. D'Audigne, 31 App. D. C. 409	38-101
Kemp v. Medical Supervisors, 46 App. D. C. 173	12-201	Lappin v. District of Columbia, 22 App. D. C. 68, 80	47-1707
Kemp v. United States, 41 App. D. C. 539	22-201	La Raw v. Prudential Ins. Co., 57 App. D. C. 289, 22 Fed. (2d) 717	14-501
Kendall v. United States, 37 U. S. 524	11-316	Larrabee v. Bell, 56 App. D. C. 121, 10 Fed. (2d) 986	5-412, 5-413
Kengla v. Randall, 22 App. D. C. 463	11-504	Latney v. United States, 18 App. D. C. 265	22-104
Kennedy v. David, 71 App. D. C. 340, 109 Fed. (2d) 676	11-715, 11-722	Laughlin v. Wheat, 68 App. D. C. 190, 95 Fed. (2d) 101	11-1302
Kennedy v. Mangan, 51 App. D. C. 296, 278 Fed. 1009	18-606	Lawrence v. Middle States Loan Bldg. & Constr. Co., 7 App. D. C. 161	28-2703
Kenyon v. Youngman, 59 App. D. C. 300, 40 Fed. (2d) 812	12-201	Layne v. Tribune Co., 63 App. D. C. 213, 71 Fed. (2d) 223	13-103
Key, In re, 189 U. S. 84	17-101	Leach v. Burr, 188 U. S. 510	11-501, 13-111, 19-313
Kidwell v. United States, 38 App. D. C. 566	22-2801	Leach v. Burr, 17 App. D. C. 128	19-312
Kiess v. Baldwin, 64 App. D. C. 66, 74 Fed. (2d) 470	28-206, 30-207	Leaman v. District of Columbia, 60 App. D. C. 395, 55 Fed. (2d) 1020	33-301
Kiess v. Baldwin, 67 App. D. C. 147, 90 Fed. (2d) 392	28-201, 28-205	Le Crone v. McAdoo, 253 U. S. 217	16-1006
Kinchlow v. Peoples Rapid Transit Co., 66 App. D. C. 382, 88 Fed. (2d) 764	13-301	Le Crone v. McAdoo, 48 App. D. C. 181	16-1001
King v. Curtin, 31 App. D. C. 23	23-2705	Ledrick v. United States, 42 App. D. C. 384	13-105
King v. District of Columbia, 51 App. D. C. 160, 277 Fed. 562	40-303	Lee v. Lee, 8 Pet. (33 U. S.) 44	49-301
King v. Harrington, 35 App. D. C. 111	17-101	Lee v. Mitcham, 69 App. D. C. 17, 98 Fed. (2d) 298	28-117, 28-401, 45-614
Kinney v. Plymouth Rock Squab Co., 236 U. S. 43	11-1508	Lee v. United States, 37 App. D. C. 442	22-1801, 22-2201
Kleindienst v. United States, 48 App. D. C. 190	22-301, 23-107	Lee v. United States, 61 App. D. C. 153, 58 Fed. (2d) 879	16-628
Klingstein v. Thomas Circle Cafe, 68 App. D. C. 5, 92 Fed. (2d) 554	28-401	Lee v. United States, 72 App. D. C. 147, 112 Fed. (2d) 46	22-2403
Klopfer v. District of Columbia, 25 App. D. C. 41	4-115	Lefler v. Forsberg, 1 App. D. C. 36	38-102, 38-110
Knight v. W. T. Walker Brick Co., 23 App. D. C. 519	16-1901	Lehmer v. Hardy, 54 App. D. C. 51, 294 Fed. 407	21-109
Knobel v. Seaboard A. L. R. Co., 56 App. D. C. 228, 12 Fed. (2d) 169	13-103	Leitch v. Emergency Hosp., 6 App. D. C. 247	38-103
Knott v. Giles, 27 App. D. C. 581	21-401	Lely v. Kalinoglu, 64 App. D. C. 213, 76 Fed. (2d) 983	20-207
Kosters v. Hoover, 69 App. D. C. 66, 98 Fed. (2d) 595	45-617	Lem Moon Sing v. United States, 158 U. S. 538	16-801
Kresge v. Crowley, 47 App. D. C. 13	45-106, 45-501	Lemon v. Martin, 55 App. D. C. 186, 3 Fed. (2d) 710	14-302
Krous v. Krous, 41 App. D. C. 200	16-419	Lenoir v. Lenoir, 24 App. D. C. 160	14-306, 16-402, 16-403, 16-418, 16-419, 30-103
		Lesh v. Lesh, 21 App. D. C. 475	16-410, 16-415, 17-101
L			
Labofish v. Berman, 60 App. D. C. 397, 55 Fed. (2d) 1022	6-102, 6-112, 14-308	Leventhal v. District of Columbia, 69 App. D. C. 229, 100 Fed. (2d) 94	5-413
La Forest v. Board of Commissioners of District of Columbia, 67 App. D. C. 396, 92 Fed. (2d) 547	1-223, 40-301, 40-603	Levy v. Splain, 50 App. D. C. 31, 267 Fed. 333	23-401
Lake for Use of Peyser v. District of Columbia, 63 App. D. C. 306, 72 Fed. (2d) 174	1-902, 1-903, 12-201	Levy Court v. Ringgold, 5 Pet. (30 U. S.) 451	11-1001
Lamar v. Splain, 42 App. D. C. 300	23-401	Levy Court v. Woodward, 2 Wall. (69 U. S.) 501	11-1101, 11-1205
Lambie, James B., Co. v. Bigelow, 34 App. D. C. 49	38-101	Lewis v. American Security & Trust Co., 53 App. D. C. 258, 289 Fed. 916	19-101
Lancer v. Anchor Line, 155 Fed. 433	44-401	Lewis v. Denison, 2 App. D. C. 387	12-201
Lanckton v. United States, 18 App. D. C. 348	22-2401	Lewis v. District of Columbia, 51 App. D. C. 221, 277 Fed. 620	22-3301
Landram v. Jordan, 203 U. S. 56	45-102	Lewis v. Luckett, 32 App. D. C. 188	19-301
Landram v. Jordan, 25 App. D. C. 291	13-108	Lewis v. Potomac Elec. Power Co., 62 App. D. C. 63, 64 Fed. (2d) 701	43-301, 43-704
Landvoight v. Melovich, 1 App. D. C. 498	38-110	Liberty Mut. Ins. Co. v. Hoage, 62 App. D. C. 189, 65 Fed. (2d) 822	36-501



Lillie v. Dennert, 232 Fed. 104	11-317	Mades v. Miller, 2 App. D. C. 455	11-513, 20-604
Lincoln v. Grant, 47 App. D. C. 475	16-1904, 28-408	Madison v. White, 60 App. D. C. 329, 54 Fed. (2d) 440	12-305
Lincoln v. Virginia Portland Cement Co., 49 App. D. C. 33, 258 Fed. 505	16-102	Maghan v. Jerome, 67 App. D. C. 9, 88 Fed. (2d) 1001	4-140, 22-2201, 49-301
Lindberg v. Humphrey, 53 App. D. C. 243, 289 Fed. 901	13-108	Magruder v. Belt, 7 App. D. C. 303	13-301, 13-401, 16-901
Lipphard v. Humphrey, 28 App. D. C. 355	19-101, 19-305, 19-306, 19-308	Maiatico v. Fletcher, 59 App. D. C. 250, 39 Fed. (2d) 295	38-118
Lipscomb v. Hough, 52 App. D. C. 313, 286 Fed. 775	38-101	Maiatico v. Mortgage Security Corp., 61 App. D. C. 245, 60 Fed. (2d) 1081	28-2404
Lisner v. Hughes, 49 App. D. C. 40, 258 Fed. 512	49-301	Mallery v. Frye, 21 App. D. C. 105	14-306
Local Union No. 368 v. Barker Painting Co., 58 App. D. C. 51, 24 Fed. (2d) 879	28-2404	Malloy v. Northern Pac. R. Co., 151 Fed. 1019	44-401, 44-403
Lockwood v. Rucker, 34 App. D. C. 376	14-302	Malone v. Hoage, 64 App. D. C. 38, 73 Fed. (2d) 855	36-501
Loehler, G. G., Constr. Co. v. Auth, 60 App. D. C. 273, 51 Fed. (2d) 435	12-303	Mangum v. Capital Trac. Co., 59 App. D. C. 241, 39 Fed. (2d) 286	44-404
Lomax v. United States, 37 App. D. C. 414	22-2401	Mann v. Cooper, 2 App. D. C. 226	12-201, 12-305, 15-101
London & Lancashire Indem. Co. v. Smoot, 52 App. D. C. 378, 287 Fed. 952	28-2707	Mann v. McDonald, 6 App. D. C. 548	15-101
London Guarantee & Acc. Co. v. Hoage, 63 App. D. C. 323, 72 Fed. (2d) 191	36-501	Manning v. Childress, 48 App. D. C. 256	11-518
Lorenz v. United States, 24 App. D. C. 337	23-107	Manning v. Gannon, 44 App. D. C. 98	12-305
Loring v. Bartlett, 4 App. D. C. 1	11-735	Manogue v. Bryant, 15 App. D. C. 245	45-501
Loube v. District of Columbia, 67 App. D. C. 322, 92 Fed. (2d) 473	6-504	Manogue v. Herrell, 13 App. D. C. 455	14-302, 19-101
Loughran v. Loughran, 292 U. S. 216	16-403, 16-421, 30-101, 30-105, 49-301	Mansfield, Ex parte, 11 App. D. C. 558	17-101
Loughran v. United States, 62 App. D. C. 57, 64 Fed. (2d) 555	16-629	Manson v. Duncanson, 166 U. S. 533	13-105
Loving v. Moore, 37 App. D. C. 214	16-1301	Marbury v. Madison, 1 Cranch (5 U. S.) 137	11-101
Lucas v. Hamilton Realty Corp., 70 App. D. C. 277, 105 Fed. (2d) 800	14-302	Marcum v. Marcum, 61 App. D. C. 332, 62 Fed. (2d) 871	16-401, 16-415
Luchs v. Christman, 42 App. D. C. 326	12-201	Marcus v. United States, 66 App. D. C. 298, 86 Fed. (2d) 854	22-105, 22-2401, 22-2403, 22-2404
Lumbermen's Mut. Casualty Co. v. Hoage, 61 App. D. C. 171, 58 Fed. (2d) 1072	36-501	Mare v. Alexander, 2 Fed. (2d) 895	47-107
Lyles v. United States, 20 App. D. C. 559	22-2801	Marfield v. McCurdy, 25 App. D. C. 342	20-115, 20-310, 20-610
Lyman v. Knickerbocker Theatre Co., 55 App. D. C. 323, 5 Fed. (2d) 538	29-718	Marine R. & Coal Co. v. United States, 257 U. S. 47	1-101, 22-1601
Lynchburg Inv. Corp. v. Rudolph, 40 App. D. C. 129	7-204	Marine R. & Coal Co. v. United States, 49 App. D. C. 285, 265 Fed. 437	16-501
Lynham v. Hufty, 44 App. D. C. 539	16-410, 17-101, 28-2501	Marks v. Frigidaire Sales Corp., 60 App. D. C. 359, 54 Fed. (2d) 974	16-1808, 16-1901
Lyon v. Bursey, 36 App. D. C. 235	16-501, 16-518	Marschalk v. Marschalk, 45 App. D. C. 455	16-415
Lyon v. Bursey, 42 App. D. C. 519	16-505, 16-1301	Marsh v. Kenyon, 37 App. D. C. 574	16-1501
Lyon v. Ford, 7 App. D. C. 314	11-320	Marshall v. Augusta, 5 App. D. C. 183	45-812
Lyons v. Bank of Discount, 154 Fed. 391	26-101	Marshall v. Kraak, 23 App. D. C. 129	45-603, 45-611
M		Marshall v. Lane, 27 App. D. C. 276	45-816
MacAboy v. Klecka, 22 Fed. Supp. 960	24-201, 24-209	Marshall v. United States, 45 App. D. C. 373	22-2401
Macafee v. Higgins, 31 App. D. C. 355	14-201	Martin v. Martin, 57 App. D. C. 173, 18 Fed. (2d) 823	16-410
Macalester v. Maryland, 114 U. S. 598	47-807	Martin v. Poole, 36 App. D. C. 281	28-406
Macfarland, In re, 30 App. D. C. 335	11-201, 11-305, 17-101	Maryland Casualty Co. v. Cardillo, 69 App. D. C. 199, 99 Fed. (2d) 432	36-501
Macfarland v. Elverson, 32 App. D. C. 81	16-601, 16-606	Maryland Casualty Co. v. Cardillo, 71 App. D. C. 160, 107 Fed. (2d) 959	36-501
Macfarland v. Washington, A. & Mt. V. R. Co., 18 App. D. C. 456	17-101	Maschaur v. Maschaur, 23 App. D. C. 87	16-403
Mackall v. Chesapeake & Ohio Canal Co., 94 U. S. 308	47-807	Massachusetts, In re, 197 U. S. 482	11-201, 17-101
Mackenzie v. Crouse, 35 App. D. C. 291	16-301	Massachusetts Bonding & Ins. Co. v. Hoage, 63 App. D. C. 89, 69 Fed. (2d) 575	36-501
Mackey v. Peters, 22 App. D. C. 341	16-402, 16-403, 21-301, 30-103, 30-104	Massachusetts Mut. Acc. Assn. v. Dudley, 15 App. D. C. 472	14-201
MacKie v. Howland, 3 App. D. C. 461	11-504	Masters v. United States, 42 App. D. C. 350	22-1202
		Mathews v. Libbey, 42 App. D. C. 272	38-121



Matson v. Mackubin, 61 App. D. C. 102, 57 Fed. (2d) 941	13-103	McMurray v. Brown, 91 U. S. 257	38-101
Maxey v. United States, 30 App. D. C. 63	22-105, 22-201	McNeil v. Gary, 40 App. D. C. 397	45-303
Mayer v. American Security & Trust Co., 33 App. D. C. 391	19-201	McNeill v. Lilly, 65 App. D. C. 210, 82 Fed. (2d) 620	28-202, 28-801
Mays v. New Amsterdam Cas. Co., 40 App. D. C. 249	14-308	McReynolds v. National Woodworking Co., 58 App. D. C. 197, 26 Fed. (2d) 975	28-205
Mazza v. Russell, 47 App. D. C. 87	28-2602	McUin v. United States, 17 App. D. C. 323	22-2401
McAfee v. United States, 72 App. D. C. 60, 111 Fed. (2d) 199	22-2401	Means v. United States, 62 App. D. C. 118, 65 Fed. (2d) 206	23-201
McAleer v. Schneider, 2 App. D. C. 461	19-205	Mearns v. Sullivan, 49 App. D. C. 179, 262 Fed. 633	17-101
McBoyle v. United States, 283 U. S. 25	40-602	Mears v. United States, 60 App. D. C. 387, 55 Fed. (2d) 745	22-2801
McCabe v. Atchison, T. & S. F. R. Co., 186 Fed. 966	44-401	Mellon v. Mertz, 58 App. D. C. 302, 30 Fed. (2d) 311	17-101
McCarl v. United States ex rel. Societa Ligure di Armamento, 58 App. D. C. 319, 30 Fed. (2d) 561	16-1001	Mellon v. Seymoure, 56 App. D. C. 301, 12 Fed. (2d) 836	12-201
McCarthy v. Holtman, 19 App. D. C. 150	38-122	Memphian, The, 245 Fed. 484	11-1508
McCartney v. Fletcher, 10 App. D. C. 572	14-306	Menna v. Menna, 70 App. D. C. 13, 102 Fed. (2d) 617	16-403
McCartney v. Holmquist, 70 App. D. C. 334, 106 Fed. (2d) 855	14-308	Merrick v. American Automobile Assn., 31 Fed. Supp. 876	11-1301
McCaul Co. v. Harr, 51 App. D. C. 111, 276 Fed. 633	17-101	Merritt v. Kay, 54 App. D. C. 152, 295 Fed. 973	45-911
McCoy v. Duehay, 51 App. D. C. 363, 279 Fed. 1001	28-616, 45-902	Merritt v. Thompson, 53 App. D. C. 233, 289 Fed. 631	45-902
McCurley v. National Sav. & Trust Co., 49 App. D. C. 10, 258 Fed. 154	12-201, 14-302	Metropolitan Casualty Ins. Co. v. Hoage, 63 App. D. C. 307, 72 Fed. (2d) 175	36-501
McDonald v. Johnston, 86 Fed. (2d) 329	22-2901, 22-2902, 24-203	Metropolitan Casualty Ins. Co. v. Hoage, 67 App. D. C. 54, 89 Fed. (2d) 798	36-501
McDonald v. Maxwell, 56 App. D. C. 287, 12 Fed. (2d) 822	45-102, 45-822	Metropolitan Life Ins. Co. v. Burch, 39 App. D. C. 397	35-202, 35-203
McGowan v. Elroy, 28 App. D. C. 188	19-103, 19-111, 22-1403	Metropolitan Life Ins. Co. v. Hawkins, 31 App. D. C. 493	35-202
McGowan v. Moody, 22 App. D. C. 148	11-305, 11-315	Metropolitan Loan & Trust Co. v. Schafer, 44 App. D. C. 356	28-106, 28-2703
McGraw v. District of Columbia, 3 App. D. C. 405	16-1201	Metropolitan R. Co. v. District of Columbia, 132 U. S. 1	1-101, 1-102
McGrew v. McGrew, 54 App. D. C. 331, 298 Fed. 204	14-306	Metropolitan R. Co. v. Moore, 121 U. S. 558	11-310
McGrew v. McGrew, 59 App. D. C. 230, 38 Fed. (2d) 541	11-326	Metzger v. Kelly, 34 App. D. C. 548	17-101
McGuire v. Gerstley, 204 U. S. 489	16-1906	Metzger v. Metzger, 35 App. D. C. 389	28-2707
McGuire v. Gerstley, 26 App. D. C. 193	16-1901	Metzger v. O'Donoghue, 53 App. D. C. 107, 288 Fed. 461	12-101, 20-403
McHenry v. United States, 51 App. D. C. 119, 276 Fed. 761	22-2401	Michalowicz v. Michalowicz, 25 App. D. C. 484	16-419
McIntire v. McIntire, 192 U. S. 116	18-710, 20-604	Michigan Tool Co. v. Drummond, 33 Fed. Supp. 540	11-307
McIntire v. McIntire, 14 App. D. C. 337	11-503, 11-504, 20-610	Middle States Loan v. Baker, 19 App. D. C. 1	26-406
McKay v. Bradley, 26 App. D. C. 449	12-201, 12-203, 15-101	Middleton v. Parke, 3 App. D. C. 149	21-211, 21-212
McKee v. District Nat. Bank, 38 App. D. C. 465	28-301, 28-401	Milano v. United States, 40 App. D. C. 379	11-1401, 11-1412, 11-1413, 49-301
McKitrick v. McKitrick, 49 App. D. C. 109, 261 Fed. 451	16-419	Miles v. McGrath, 4 Fed. Supp. 604	12-201
McKnight's Estate, In re, 1 App. D. C. 28	20-109	Millard v. Roberts, 202 U. S. 429	7-1213
McLane v. Cropper, 5 App. D. C. 276	11-504	Miller v. Ambrose, 35 App. D. C. 75	13-209
McLarren v. McLarren, 44 App. D. C. 555	17-101	Miller v. Payne, 28 App. D. C. 396	18-706
McLarren v. McLarren, 45 App. D. C. 237	16-417	Miller v. United States, 6 App. D. C. 6	22-1504
McLaughlin v. Bank of Potomac, 7 How. (48 U. S.) 220	11-325	Miller v. United States, 38 App. D. C. 361	23-107
McLean v. Nolan, 44 App. D. C. 1	38-101, 38-103	Miller v. United States, 41 App. D. C. 52	22-1405, 22-2201
McManus v. Lynch, 28 App. D. C. 381	18-101	Miller v. United States, 57 App. D. C. 228, 19 Fed. (2d) 702	22-501
McMillan v. Fuller, 41 App. D. C. 384	12-201, 13-301, 16-501	Miller v. United States, 61 App. D. C. 58, 57 Fed. (2d) 424	7-210



Miller-Shoemaker Co. v. Sturgeon, 31 App. D. C. 406	18-701, 18-723	Morris v. United States, 174 U. S. 196	47-807, 49-301
Milton v. United States, 71 App. D. C. 394, 110 Fed. (2d) 556	22-1401, 28-305, 28-507	Morse v. Brainerd, 42 App. D. C. 448	28-616, 45-819, 45-904
Minar v. Sheehy, 56 App. D. C. 318, 13 Fed. (2d) 290	13-208	Morse v. United States ex rel. Hine, 29 App. D. C. 433	28-2407
Minick v. Associates Inv. Co., 71 App. D. C. 367, 110 Fed. (2d) 267	11-305, 11-703	Morsell v. First Nat. Bank, 1 Otto (91 U. S.) 357	15-103
Miniggio v. Hutchins, 43 App. D. C. 117	11-503, 11-504, 18-503	Moses v. Hayes, 36 App. D. C. 194	11-301, 16-301, 16-303, 16-305
Minnix Co. v. L. C. Smith Bros. Typewriter Co., 33 App. D. C. 357	42-103	Moses v. Lockwood, 54 App. D. C. 115, 295 Fed. 936	16-311
Minton v. F. G. Smith Piano Co., 36 App. D. C. 137	13-208	Moses v. United States, 19 App. D. C. 290	15-204
Missouri Pac. R. Co. v. Castle, 172 Fed. 841	44-401	Moss, In re, 23 App. D. C. 474	23-106
Mitchell v. Reichelderfer, 61 App. D. C. 50, 57 Fed. (2d) 416	7-204, 7-209	Moss v. Littleton, 6 App. D. C. 201	35-901
Mitchell Min. Co. v. Emig, 35 App. D. C. 527	13-103	Moss v. United States, 72 Fed. (2d) 30	24-401
Moder v. United States, 62 App. D. C. 65, 64 Fed. (2d) 703	11-305	Moss v. United States, 23 App. D. C. 475	11-305, 49-301
Moens v. United States, 50 App. D. C. 15, 267 Fed. 317	22-2001	Mostyn v. United States, 62 App. D. C. 22, 64 Fed. (2d) 145	14-305
Moffatt v. United States, 60 App. D. C. 35, 46 Fed. (2d) 616	22-1301	Mullen v. Canfield, 70 App. D. C. 168, 105 Fed. (2d) 47	11-601, 11-602, 11-606
Mollohan v. Masters, 45 App. D. C. 414	28-2703	Muldowny v. Mowatt, 43 App. D. C. 49	23-102
Monahan v. Hoage, 67 App. D. C. 174, 90 Fed. (2d) 419	36-501	Mulvihill v. Clabaugh, 21 App. D. C. 440	11-208
Monalokos v. United States, 41 App. D. C. 19	22-2801	Munoz v. Porto Rico R. Light & Power Co., 83 Fed. (2d) 262	11-316
Moncure v. Moncure, 51 App. D. C. 292, 278 Fed. 1005	11-325, 16-403, 16-416	Munsey Trust Co. v. Alexander, 59 App. D. C. 369, 42 Fed. (2d) 604	45-106, 45-302
Monroe v. United States, 56 App. D. C. 80, 10 Fed. (2d) 645	22-2401	Murphy v. Gould, 38 App. D. C. 363	11-205
Montgomery v. Brown, 25 App. D. C. 490	45-812	Murphy v. Paris, 57 App. D. C. 19, 16 Fed. (2d) 515	11-315
Moore v. Moore, 47 App. D. C. 23	18-723	Murray v. United States, 53 App. D. C. 119, 288 Fed. 1008	14-305, 22-2401
Moore v. Pywell, 29 App. D. C. 312	11-305, 16-1201	Mutual Ben. Life Ins. Co. v. Flynn, 60 App. D. C. 108, 48 Fed. (2d) 1020	15-312, 16-303, 16-323
Moore v. Shoemaker, 10 App. D. C. 6	1-625	Mutual Comm. & Stock Co. v. Moore, 13 App. D. C. 78	16-1801
Moore v. Snyder, 71 App. D. C. 293, 109 Fed. (2d) 840	12-201, 12-305	Mutual Life Ins. Co. v. Gott, 62 App. D. C. 379, 68 Fed. (2d) 426	35-202
Moore's Victoria Theatre Co. v. District of Columbia, 55 App. D. C. 46, 299 Fed. 923	5-301, 5-309, 5-311	Myers v. Mayhew, 32 App. D. C. 205	16-1501
Moran v. Harrison, 67 App. D. C. 237, 91 Fed. (2d) 310	12-201	Myers v. Morgan, 224 Fed. 413	24-402
Moran v. Moran, (D. C.—D. C.), 31 Fed. Supp. 227	16-411	Myers v. Myers, 55 App. D. C. 224, 4 Fed. (2d) 300	16-410
Moran v. Schlosberg, 67 App. D. C. 163, 90 Fed. (2d) 408	12-201, 26-101	Myers v. United States, 272 U. S. 52	1-206, 11-601
Morehead v. New York ex rel. Tipaldo, 298 U. S. 587	36-401	N	
Moreland v. United States, 51 App. D. C. 118, 276 Fed. 640	22-903	Nalle v. Oyster, 230 U. S. 165	11-205, 11-312, 11-316, 11-318, 11-320
Morgan v. Adams, 29 App. D. C. 198	19-101	Nash v. Ober, 2 App. D. C. 304	20-604
Morgan v. Hoage, 63 App. D. C. 355, 72 Fed. (2d) 727	36-501	Nash v. Rawlett, 41 App. D. C. 456	16-501
Morgan v. Howard, 54 App. D. C. 3, 293 Fed. 650	29-223, 29-224, 29-237	Nashville Interurban R. Co. v. Barnum, 212 Fed. 634	11-301
Morgan v. Kraft, 52 App. D. C. 172, 285 Fed. 906	13-217	Nation v. District of Columbia, 34 App. D. C. 453	22-403, 22-3112, 23-101
Morgan v. Morgan, 30 App. D. C. 436	19-101	National Assn. of Certified Public Accountants v. United States, 53 App. D. C. 391, 292 Fed. 668	29-402, 29-601, 29-725
Morganthau v. Fidelity & Deposit Co., 68 App. D. C. 163, 94 Fed. (2d) 632	13-108	National Ben. Life Ins. Co. v. Shaw-Walker Co., 71 App. D. C. 276, 111 Fed. (2d) 497	29-726, 29-727
Morimura v. Samaha, 25 App. D. C. 189	16-328, 16-329	National Bondholders Corp. v. McClintic, 99 Fed. (2d) 595	16-1001
Morris v. Foster, 51 App. D. C. 238, 278 Fed. 321	19-103, 19-312, 20-106	National Cafes v. Elite Laundry Co., 57 App. D. C. 178, 18 Fed. (2d) 828	45-820
		National Capital Bank v. Bryan, 20 App. D. C. 26	28-115, 28-806



National Casualty v. Hoage, 64 App. D. C. 33, 73 Fed. (2d) 850	36-501	Norman v. United States, 20 App. D. C. 494	22-2401
National City Bank v. Bankers Trust Co., 37 App. D. C. 553	28-401	Norwood v. Francis, 25 App. D. C. 463	30-208
National Council Junior Order United American Mechanics v. State Council, 27 App. D. C. 1	35-901	Notes v. Doyle, 32 App. D. C. 413	19-103
National Exp. Co. v. Morris, 15 App. D. C. 262	29-211	Notes v. Snyder, 55 App. D. C. 233, 4 Fed. (2d) 426	30-207, 30-208
National Safe Deposit, Sav. & Trust Co. v. Gray, 12 App. D. C. 276	29-225	Noyes v. Parker, 68 App. D. C. 13, 92 Fed. (2d) 562	45-203, 45-816
National Safe Deposit, Sav. & Trust Co. v. Heiberger, 19 App. D. C. 506	17-101, 19-101, 19-304, 19-312	Nuckols v. Nuckols, 38 App. D. C. 441	17-101
National Safe Deposit, Sav. & Trust Co. v. Hibbs, 32 App. D. C. 459	23-2503, 29-225	Nuckols v. United States, 69 App. D. C. 120, 99 Fed. (2d) 353	22-1504, 23-301, 49-301
National Safe Deposit, Sav. & Trust Co. v. Sweeney, 3 App. D. C. 401	17-101, 19-312	Nusbaum v. District of Columbia, 58 App. D. C. 47, 24 Fed. (2d) 622	10-137
National Sav. & Trust Co. v. Reichelderfer, 61 App. D. C. 38, 57 Fed. (2d) 404	5-203, 7-204, 7-314	O	
National Sav. & Trust Co. v. Ryan, 49 App. D. C. 159, 262 Fed. 613	12-201	O'Brien v. Dougherty, 1 App. D. C. 148	45-812, 45-816
National Surety Co. v. Poates, 43 App. D. C. 334	16-301	O'Brien v. United States, 27 App. D. C. 263	22-1202
National Union v. Sawyer, 42 App. D. C. 475	14-501	O'Brien v. United States, 69 App. D. C. 135, 99 Fed. (2d) 368	22-301, 22-2501
Naylor v. Mealy, 62 App. D. C. 321, 67 Fed. (2d) 693	19-309	Ockstadt v. Bowles, 34 App. D. C. 58	14-302
Nealy v. Hazen, 63 App. D. C. 239, 71 Fed. (2d) 692	7-117, 7-201, 16-601	Ocuppaugh v. Norton, 24 App. D. C. 296	28-616
Neely v. Philadelphia Inquirer Co., 61 App. D. C. 334, 62 Fed. (2d) 873	13-103	Oden v. District of Columbia, 65 App. D. C. 50, 79 Fed. (2d) 175	40-609
Neild v. District of Columbia, 71 App. D. C. 306, 110 Fed. (2d) 246	1-102, 47-1402	O'Donoghue v. United States, 289 U. S. 516	11-101, 11-203, 11-302, 11-316, 11-324
Nelson v. Nelson, 60 App. D. C. 156, 49 Fed. (2d) 680	16-417	Ofenstein v. Bryan, 20 App. D. C. 1	23-115, 28-806
Nelson v. United States, 28 App. D. C. 32	22-1504, 22-1505	Ohio Bank v. Central Constr. Co., 17 App. D. C. 524	29-719
Nelson v. United States, 60 App. D. C. 323, 53 Fed. (2d) 935	23-103	Ohio Nat. Bank v. Berlin, 26 App. D. C. 218	45-402, 45-501
Neubeck v. Lynch, 37 App. D. C. 576	16-1201	Okie v. Person, 23 App. D. C. 170	45-915
Neuland's Estate, In re, 44 W. L. R. 378	18-520	Olverson v. Olverson, 54 App. D. C. 48, 293 Fed. 1015	16-403
New Amsterdam Casualty Co. v. Cardillo, 71 App. D. C. 172, 108 Fed. (2d) 492	36-501	O'Malley v. Woodrough, 307 U. S. 277	11-101
New Amsterdam Casualty Co. v. Hoage, 61 App. D. C. 306, 62 Fed. (2d) 468	36-501	O'Neil v. O'Neil, 55 App. D. C. 40, 299 Fed. 914	16-403, 22-301
New Arcade Co. v. Owens, 49 App. D. C. 65, 258 Fed. 965	14-201	Operative Plasterers and Cement Finishers International Assn. v. Case, 68 App. D. C. 43, 93 Fed. (2d) 56	11-317, 11-318
Newman v. Baker, 10 App. D. C. 197	45-501	Oregon R. & N. Co. v. Campbell, 177 Fed. 318	44-401
Newman v. Lynchburg Inv. Corp., 236 U. S. 692	7-202, 7-204, 7-208	Orenstein & Koppel, Aktiengesellschaft v. Koppel Industrial Car Equipment Co., 59 App. D. C. 221, 38 Fed. (2d) 532	16-301
Newman v. United States ex rel. Frizzell, 238 U. S. 537	1-103, 16-1602, 16-1603	Orlove v. National Sav. & Trust Co., 68 App. D. C. 387, 93 Fed. (2d) 259	45-617
New Negro Alliance v. Harry Kaufman, 64 App. D. C. 362, 78 Fed. (2d) 415	17-101	Ormsby v. United States, 273 Fed. 977	11-305, 21-310, 22-2301, 22-2302, 22-2304, 24-301, 24-303.
New York Continental Filtration Co. v. Karr, 31 App. D. C. 459	13-103	Ormsby v. Webb, 134 U. S. 47	11-310, 11-316, 11-501
Nicholls v. Hodges, 1 Pet. (26 U. S.) 562	11-316	Ostrow v. McNeal, 68 App. D. C. 69, 93 Fed. (2d) 228	15-304, 15-308, 15-310, 15-312
Nield v. District of Columbia, 71 App. D. C. 306, 110 Fed. (2d) 246	47-1401	O'Toole v. Lamson, 41 App. D. C. 276	28-205, 28-409
Nolan Motor Co., Inc., In re (D. C.-D. C.), 25 Fed. Supp. 186	12-401, 42-101	Otterback v. Patch, 5 App. D. C. 69	11-320, 13-301, 15-204
Nordlinger v. United States, 24 App. D. C. 406	22-2201	Ould v. Washington Hosp. for Foundlings, 95 U. S. 303	32-701, 45-102
		Overby v. Gordon, 177 U. S. 214	11-517
		P	
		Page v. Burnstine, 102 U. S. 664	14-301
		Palais Royal v. Calhoun, 67 App. D. C. 364, 92 Fed. (2d) 515	11-744



Palm v. Bachrach, 55 App. D. C. 302, 5 Fed. (2d) 125	42-103	Persham v. United States, 70 App. D. C. 116, 104 Fed. (2d) 249	1-224, 23-101, 40-603
Palmer v. Costello, 41 App. D. C. 165	11-1101	Persing v. Daniels, 43 App. D. C. 470	16-1001
Palmer v. King, 41 App. D. C. 419	16-1801	Peters v. Peters, 64 App. D. C. 331, 78 Fed. (2d) 215	19-103
Palmer v. Lenovitz, 35 App. D. C. 303	11-602, 22-107, 22-2722, 49-301	Philadelphia & Reading R. Co. v. McKibben, 243 U. S. 264	13-103
Palmer v. United States ex rel. Lane, 41 App. D. C. 341	11-1101	Philadelphia, B. & W. R. Co. v. Schubert, 224 U. S. 603	44-401
Panama Ref. Co. v. Ryan, 293 U. S. 388	5-105	Philips v. Bailey, 57 App. D. C. 287, 22 Fed. (2d) 715	17-101
Parnitz v. District of Columbia, 72 App. D. C. 131, 112 Fed. (2d) 39	47-2406	Phillips v. Gilbert, 101 U. S. 721	38-114
Paolucci v. United States, 30 App. D. C. 217	23-108	Phillips v. Negley, 117 U. S. 665	49-301
Parish v. Hedges, 34 App. D. C. 21	18-526	Phoenix Mut. Life Ins. Co. v. Harris, 45 App. D. C. 474	18-602
Parish v. McGowan, 39 App. D. C. 184	14-302, 20-108	Pierce v. Gillet & Co., 64 App. D. C. 156, 75 Fed. (2d) 675	12-304, 28-2503, 28-2504
Parker, In re, 299 Fed. 1006	22-903, 22-904	Pierce v. United States, 37 App. D. C. 582	17-101
Parker v. District of Columbia, 50 App. D. C. 356, 273 Fed. 320	40-617	Pilger v. Sutherland, 61 App. D. C. 84, 57 Fed. (2d) 604	13-108
Parker v. United States, 3 Fed. (2d) 903	22-903	Pitts v. Peak, 60 App. D. C. 195, 50 Fed. (2d) 485	11-305, 11-306, 11-322, 49-301
Parks v. Parks, 68 App. D. C. 363, 98 Fed. (2d) 235	16-403	Plumb v. Bateman, 2 App. D. C. 156	13-109, 18-612, 20-501
Parlton v. United States, 64 App. D. C. 169, 75 Fed. (2d) 772	22-401	Plummer v. Northern Pac. R. Co., 152 Fed. 206	44-402
Parrella v. Parrella (D. C.-D. C.), 33 Fed. Supp. 614	16-403, 16-410	Poff v. Washington Terminal Co. 63 App. D. C. 86, 69 Fed. (2d) 572	36-501
Parsons v. District of Columbia, 170 U. S. 45	43-1501, 43-1503, 43-1511	Polen v. United States, 41 App. D. C. 4	22-105, 22-503
Patrick v. Smith, 60 App. D. C. 6, 45 Fed. (2d) 924	43-202	Posey v. Tennessee Valley Authority, 93 Fed. (2d) 726	36-501
Partridge v. United States, 39 App. D. C. 571	22-1301	Posey v. United States, 26 App. D. C. 302	22-401
Patten v. Glover, 1 App. D. C. 466	14-302, 18-706	Pothier v. Rodman, 261 U. S. 307	11-1508
Patten v. United States, 42 App. D. C. 239	11-1407, 22-2401	Potomac Elec. Power Co. v. Cardillo, 71 App. D. C. 163, 107 Fed. (2d) 962	36-501
Patterson v. United States, 39 App. D. C. 84	22-1202	Potomac Elec. Power Co. v. Hazen, 67 App. D. C. 161, 90 Fed. (2d) 406	1-102, 47-1701
Pavarini v. Title Guar. & S. Co., 36 App. D. C. 348	12-201	Potomac Elec. Power Co. v. Public Utilities Comm., 51 App. D. C. 77, 276 Fed. 327	43-706
Pawnee, 205 Fed. 333	44-401	Potomac Elec. Power Co. v. Rudolph, 58 App. D. C. 261, 29 Fed. (2d) 634	44-215, 47-1701
Paylor v. United States, 42 App. D. C. 428	22-105, 22-1508	Potomac Elec. Power Co. v. United States, 66 App. D. C. 77, 85 Fed. (2d) 243	16-619
Payne v. Payne, 54 App. D. C. 149, 295 Fed. 970	16-410, 16-415	Potomac Steamboat Co. v. Upper Potomac Steamboat Co., 109 U. S. 672	9-101
Payne v. Payne, 56 App. D. C. 167, 11 Fed. (2d) 464	14-302	Powell v. Hoage, 61 App. D. C. 99, 57 Fed. (2d) 766	36-501
Payne v. Robinson, 26 App. D. C. 283	20-115	Powell v. Wisconsin Cent. R. Co., 159 Fed. 864	44-402
Peak v. Calhoun, 63 App. D. C. 113, 69 Fed. (2d) 989	11-907	Prall v. Prall, 56 App. D. C. 333, 13 Fed. (2d) 305	14-402
Peak v. Reed, 58 App. D. C. 44, 24 Fed. (2d) 619	3-121, 11-602, 11-907	Prall v. Stafford, 42 App. D. C. 383	16-1001
Pearson v. Small, 65 App. D. C. 243, 82 Fed. (2d) 849	45-603	Presbrey v. Thomas, 1 App. D. C. 171	1-509, 13-401, 28-928, 28-2703, 41-201
Peck v. Heurich, 6 App. D. C. 273	16-1501	Price v. Moyer, 53 App. D. C. 63, 288 Fed. 269	23-701
Pedersen v. Delaware, L. & W. R. Co., 229 U. S. 146	44-401	Price v. United States, 51 App. D. C. 106, 276 Fed. 628	22-2401
Pedersen v. Pedersen, 71 App. D. C. 26, 107 Fed. (2d) 227	16-403, 16-410, 16-415	Price v. United States, 53 App. D. C. 164, 289 Fed. 562	22-1401
Penn Bridge Co. v. United States, 29 App. D. C. 452	22-3407	Pringleau v. Superintendent of Wash. Asylum & Jail, 55 App. D. C. 99, 2 Fed. (2d) 317	17-103, 22-3102
Peoples Nat. Bank v. Saville, 25 App. D. C. 139	29-210, 29-211	Proctor v. Hoage, 65 App. D. C. 153, 81 Fed. (2d) 555	36-501
Perin v. Perin, 41 W. L. R. 265	18-722		
Perry v. Reeve, 56 App. D. C. 243, 12 Fed. (2d) 184	1-625		
Perry v. Wilson, 60 App. D. C. 109, 48 Fed. (2d) 1021	17-101, 20-101		



Provident Relief Assn. v. Vernon, 57 App. D. C. 235, 19 Fed. (2d) 709	35-202	Rhees v. Morris, 52 App. D. C. 27, 280 Fed. 1001	16-901, 16-905
Prudential Ins. Co. v. Lear, 31 App. D. C. 184	14-308	Rhodes v. Bell, 2 How. (43 U. S.) 397	1-101
Prudent Patricians of Pompeii v. Marr, 20 App. D. C. 363	35-901	Rhodes v. Bowling Green White Stone Co., 43 App. D. C. 298	16-301
Public Motor Service v. Standard Oil Co., 69 App. D. C. 89, 99 Fed. (2d) 124	28-508	Rhodes v. Rhodes, 36 App. D. C. 261	16-415
Public Utilities Comm. v. Capital Trac Co. 57 App. D. C. 85, 17 Fed. (2d) 673	43-305	Rhodes v. Rhodes, 68 App. D. C. 313, 96 Fed. (2d) 715	30-101, 30-104
Pumphrey v. Boggan, 8 App. D. C. 449	12-305	Rhodes v. Robie, 9 App. D. C. 305	18-215
Q		Richards v. Bippus, 18 App. D. C. 293	28-2701, 28-2703, 28-2708, 30-208
Quinn v. Dougherty, 58 App. D. C. 339, 30 Fed. (2d) 749	8-133	Richards v. Davison, 45 App. D. C. 395	16-1001
Quinn v. National Mtg. & Inv. Co., 61 App. D. C. 44, 57 Fed. (2d) 410	28-2702, 28-2704	Richards v. Street, 31 App. D. C. 427	28-402
R		Richards v. Washington Terminal Co., 233 U. S. 546	7-1212, 7-1213
Ragan v. Wardell, 67 App. D. C. 222, 91 Fed. (2d) 253	28-402, 28-407	Richardson v. Browning, 57 App. D. C. 186, 18 Fed. (2d) 1008	3-116, 11-907, 21-129, 30-101, 32-208, 32-209, 32-815, 32-907, 32-908
Railey v. Railey (D. C.-D. C.), 30 Fed. Supp. 121	18-301	Richardson v. Daggett, 24 App. D. C. 440	11-503, 18-503, 20-503
Ralph v. Hazen, 68 App. D. C. 55, 93 Fed. (2d) 68	7-520	Richardson v. Penicks, 1 App. D. C. 261	45-812
Ramsey v. Ross, 66 App. D. C. 186, 85 Fed. (2d) 685	16-1201	Richardson v. Richardson, 71 App. D. C. 26, 112 Fed. (2d) 19	16-409
Randle v. Davis Coal Co., 15 App. D. C. 357	28-504	Richardson v. Richardson, 72 App. D. C. 67, 112 Fed. (2d) 19	16-403
Randle v. United States, 72 App. D. C. 368, 113 Fed. (2d) 945	22-1301	Richardson v. Van Auken, 5 App. D. C. 209	16-102
Randolph & Co. v. Columbia Graphophone Co., 45 App. D. C. 146	42-103	Richmond v. Cake, 1 App. D. C. 447	16-308, 45-915
Rapeer v. Colpoys, 66 App. D. C. 216, 85 Fed. (2d) 715	11-326, 16-410, 16-411, 16-415	Rickets v. Sun Printing & Pub. Co., 27 App. D. C. 222	13-103
Raymond v. United States, 25 App. D. C. 555	22-2301	Riddle v. Gibson, 29 App. D. C. 237	19-101
Raymond v. United States, 26 App. D. C. 250	11-320	Ridgeway v. Ridgeway, 61 App. D. C. 395, 63 Fed. (2d) 458	16-401
Read v. United States, 55 App. D. C. 43, 299 Fed. 918	22-1401	Riegel v. Public Utilities Comm., 60 App. D. C. 111, 48 Fed. (2d) 1023	43-317, 43-902
Reamy v. District of Columbia, 50 App. D. C. 359, 273 Fed. 323	40-617	Riggs Fire Ins. Co. v. Shedd, 16 App. D. C. 150	38-102, 38-103, 38-106, 38-108
Redman v. Campbell, 46 App. D. C. 288	15-103	Rives v. O'Hearne, 64 App. D. C. 48, 73 Fed. (2d) 984	24-401
Reed v. Allen, 286 U. S. 191	16-518	Roach, Ex parte, 244 Fed. 625	39-401, 39-901
Reed v. Colpoys, 69 App. D. C. 163, 99 Fed. (2d) 396	23-401	Roberts v. International Bank, 58 App. D. C. 87, 25 Fed. (2d) 214	1-501, 26-110, 28-701
Reed v. Cushman, 251 Fed. 872	39-401	Roberts v. Reilly, 116 U. S. 80	23-401
Reed v. Reed, 52 App. D. C. 35, 280 Fed. 1009	16-415	Robertson v. United States ex rel. Baff, 52 App. D. C. 177, 285 Fed. 911	16-1001
Reed v. Tierney, 12 App. D. C. 165	12-305	Robinson v. Duvall, 27 App. D. C. 535	19-101
Reeves v. United States, 56 App. D. C. 376, 15 Fed. (2d) 734	22-1202	Robinson v. Hillman, 36 App. D. C. 576	16-501, 16-505, 16-509, 16-516, 16-519
Reichelderfer v. Hechinger, 61 App. D. C. 104, 57 Fed. (2d) 943	7-611, 7-612, 47-1901, 47-1919	Robinson v. Morrison, 2 App. D. C. 105	16-301
Reichelderfer v. Ihrie, 61 App. D. C. 198, 59 Fed. (2d) 873	4-402	Robinson v. United States, 42 App. D. C. 186	22-1301
Reichelderfer v. Quinn, 287 U. S. 315	5-412, 8-133	Robinson v. United States, 61 App. D. C. 370, 63 Fed. (2d) 147	22-2401
Reid v. Aderhold, 65 Fed. (2d) 110	22-1401	Robinson v. United States, 72 App. D. C. 254, 114 Fed. (2d) 475	22-2501
Reid v. Anderson, 13 App. D. C. 30	16-1501	Rockwell v. Capital Trac. Co., 25 App. D. C. 98	11-320
Reilly v. Cullinane, 53 App. D. C. 17, 287 Fed. 994	18-202	Rogge v. Michael Del Balso, Inc., 15 Fed. Supp. 499	1-804
Reilly v. Sabin, 65 App. D. C. 125, 81 Fed. (2d) 259	12-401, 15-103	Rohde v. United States, 34 App. D. C. 249	22-2201
Resler v. Shehee, 1 Cranch. (5 U. S.) 110	11-316	Roller v. Caruthers, 5 App. D. C. 368	15-107, 15-204
		Roller v. Clarke, 19 App. D. C. 539	16-1301
		Rollings v. Rollings, 60 App. D. C. 305, 53 Fed. (2d) 917	16-401
		Roney v. United States, 43 App. D. C. 533	22-2801
		Rose v. District of Columbia, 51 App. D. C. 222, 277 Fed. 621	22-3301



Rose v. Washington Times Co., 57 App. D. C. 385, 23 Fed. 993 12-201  
 Rose Campbell Mission v. Richardson, 64 App. D. C. 21, 73 Fed. (2d) 661 29-501, 29-502, 29-511, 29-601  
 Ross v. Fickling, 11 App. D. C. 442 12-201  
 Rosslyn Steel & Cement Co. v. Etchison, 61 App. D. C. 43, 57 Fed. (2d) 409 28-2702  
 Roth v. Elsinger Mill & Lbr. Co., 63 App. D. C. 128, 70 Fed. (2d) 294 38-110, 38-114  
 Rowlett v. Nash, 38 App. D. C. 598 16-501  
 Rowlette v. Rothstein Dental Laboratories, 61 App. D. C. 373, 63 Fed. (2d) 150 36-501  
 Rowley v. Welch, 72 App. D. C. 351, 114 Fed. (2d) 499 22-201  
 Royal Glue Co. v. Lange, 40 App. D. C. 9 29-211  
 Rubin v. United States, 59 App. D. C. 195, 37 Fed. (2d) 991 2-101  
 Rudolph v. Creamer, 39 App. D. C. 1 4-121  
 Rudolph v. Hunt, 52 App. D. C. 343, 286 Fed. 1007 32-307  
 Rudolph v. Knox, 52 App. D. C. 33, 280 Fed. 1007 7-611  
 Rudolph v. Lockwood, 55 App. D. C. 101, 2 Fed. (2d) 319 5-101  
 Rudolph v. Moshewvel, 37 App. D. C. 76 16-1001  
 Rudolph v. Peters, 35 App. D. C. 438 16-515, 16-1501  
 Rudolph v. Potomac Elec. Power Co., 58 App. D. C. 54, 24 Fed. (2d) 882 47-701, 47-1701  
 Rudolph v. United States ex rel. Rock, 55 App. D. C. 362, 6 Fed. (2d) 487 4-510, 4-513  
 Rudolph v. Warwick, 56 App. D. C. 128, 10 Fed. (2d) 993 7-108, 7-301, 47-405  
 Ruppert v. Beavans, 2 App. D. C. 298 12-305  
 Russell v. Moderns Restaurant, 65 App. D. C. 90, 80 Fed. (2d) 533 16-327, 16-328  
 Rust, H. L., Co. v. Drury, 62 App. D. C. 329, 68 Fed. (2d) 167 45-820, 45-908  
 Ryan v. McAdoo, 46 App. D. C. 117 20-501  
 Ryan v. Security Sav. & Commercial Bank, 50 App. D. C. 292, 271 Fed. 366 28-205, 28-504, 28-801, 28-802  
 Ryan v. United States, 26 App. D. C. 74 22-2201  
 Rynex v. District of Columbia, 72 App. D. C. 386, 114 Fed. (2d) 842 47-1604, 47-2403

## S

Sabens v. United States, 40 App. D. C. 440 22-2401  
 Sachs v. Kinyoun, 47 App. D. C. 561 28-1929  
 Sacks v. United States, 41 App. D. C. 34 22-2801  
 Sacrini v. United States, 38 App. D. C. 371 22-2401  
 St. Louis, I. M. & S. R. Co. v. Conley, 187 Fed. 949 44-401  
 Saks v. B. H. Stinemetz & Son Co., 54 App. D. C. 38, 293 Fed. 1005 13-214, 13-215  
 Saks v. Huddleston, 59 App. D. C. 133, 36 Fed. (2d) 537 30-211  
 Samaha v. Mason, 27 App. D. C. 470 16-1801  
 Samaha v. Samaha, 18 App. D. C. 76 16-1901  
 Sambataro v. Caffo, 57 App. D. C. 260, 20 Fed. (2d) 276 13-214  
 Sanders v. Allen, 69 App. D. C. 307, 100 Fed. (2d) 717 16-802, 24-403  
 Sandstrom v. Pacific S. S. Co., 260 Fed. 661 44-401

Sanford v. Sanford, 52 App. D. C. 315, 286 Fed. 777 11-703, 15-306, 20-501, 20-502  
 Sanford v. United States, 69 App. D. C. 44, 98 Fed. (2d) 325 14-305  
 Sanselo v. United States, 44 App. D. C. 508 22-103, 22-501, 22-503, 22-2801  
 Sanstrom v. Pacific S. S. Co., 260 Fed. 661 44-404  
 Santa Fe Cent. R. Co. v. Friday, 232 U. S. 694 44-401  
 Sardo v. Villapiano, 65 App. D. C. 121, 81 Fed. (2d) 255 21-101  
 Sarfert Co. v. Chipman, 205 Fed. 937 11-1509  
 Sasnett v. Iowa State Traveling Men's Assn., 90 Fed. (2d) 514 13-103  
 Saul v. Saul, 70 App. D. C. 112, 104 Fed. (2d) 245 11-312  
 Saunders, Ex parte, 275 U. S. 507 11-1508  
 Saunders v. Goldstein, (D. C.-D. C.), 30 Fed. Supp. 150 33-201  
 Savage v. White, 56 App. D. C. 365, 14 Fed. (2d) 352 24-301  
 Scaffidi v. United States, 37 Fed. (2d) 203 14-305  
 Schlaefel v. Schlaefel, 71 App. D. C. 350, 112 Fed. (2d) 177 16-410, 35-717  
 Schooley v. Dimmick, 56 App. D. C. 350, 13 Fed. (2d) 956 29-604  
 Schrot v. Schoenfeld, 23 App. D. C. 421 13-301  
 Schwartz v. Brownlow, 50 App. D. C. 279, 270 Fed. 1019 1-228, 5-413, 5-423  
 Schwartz v. Murphy, 72 App. D. C. 103, 112 Fed. (2d) 24 11-703  
 Schwartz v. Sacks, 55 App. D. C. 87, 2 Fed. (2d) 188 30-207, 30-208  
 Scott v. Herrell, 27 App. D. C. 395 14-402, 16-505  
 Scott v. Herrell, 31 App. D. C. 45 19-306  
 Scott v. Hoage, 63 App. D. C. 391, 73 Fed. (2d) 114 36-501  
 Sears v. Sears, 67 App. D. C. 379, 92 Fed. (2d) 530 16-401, 16-403  
 Second Nat. Bank v. Yankon, 55 App. D. C. 252, 4 Fed. (2d) 445 28-1703  
 Secrist v. Bryant, 52 App. D. C. 286, 286 Fed. 456 15-201  
 Security Sav. & Commercial Bank v. District of Columbia, 51 App. D. C. 316, 279 Fed. 185 47-1703  
 Seeley v. Seeley, 50 App. D. C. 391 16-410  
 Seher v. District of Columbia, 68 App. D. C. 207, 95 Fed. (2d) 118 40-609  
 Seitz v. Seitz, 11 App. D. C. 358 45-816  
 Selden v. Lee, 55 App. D. C. 164, 3 Fed. (2d) 335 45-932  
 Semmes v. United States, 6 Fed. Supp. 119 18-211  
 Serkowich v. Wardell, 69 App. D. C. 389, 102 Fed. (2d) 253 17-101, 17-102  
 Settle v. Settle, 56 App. D. C. 50, 8 Fed. (2d) 911 45-816  
 Settlemier v. Sullivan, 7 Otto (97 U. S.) 444 11-736  
 Seufferle v. Macfarland, 28 App. D. C. 94 16-601, 17-101  
 Shannon & Luchs Constr. Co. v. Reichelderfer, 61 App. D. C. 36, 57 Fed. (2d) 402 7-209, 7-221, 16-303



Sheehy v. O'Donoghue, 68 App. D. C. 127, 94 Fed. (2d) 252	45-816	Smith v. Doyle, 69 App. D. C. 60, 98 Fed. (2d) 341	40-403
Shell Eastern Petroleum Products v. White, 62 App. D. C. 332, 68 Fed. (2d) 379	12-302	Smith v. Gilmore, 7 App. D. C. 192	42-103
Shelley v. Westcott, 23 App. D. C. 135	12-305	Smith v. Gotwals, 61 App. D. C. 304, 62 Fed. (2d) 466	7-204, 7-221
Shellman v. Shellman, 68 App. D. C. 197, 95 Fed. (2d) 108	16-410	Smith v. Herrell, 11 App. D. C. 425	28-2601
Shepherd v. Pepper, 133 U. S. 626	45-616	Smith v. Jackson, 48 App. D. C. 565	45-603
Sherwood Bros., Inc. v. District of Columbia, 72 App. D. C. 155, 113 Fed. (2d) 162	47-2406	Smith v. Mason, 14 Wall. (81 U. S.) 419	11-101
Shettel v. United States, 72 App. D. C. 250, 113 Fed. (2d) 34	22-1501, 23-107	Smith v. O'Connor, 66 App. D. C. 367, 88 Fed. (2d) 749	13-214
Shick v. United States, 195 U. S. 65	11-616	Smith v. Shapiro, 61 App. D. C. 66, 57 Fed. (2d) 432	15-201
Shields v. Shields, 69 App. D. C. 331, 101 Fed. (2d) 255	11-504, 11-703, 18-607	Smith v. United States, 50 App. D. C. 208, 269 Fed. 860	22-2401
Shipley v. Shamwell, 41 App. D. C. 267	15-201	Smith v. United States, 57 App. D. C. 71, 17 Fed. (2d) 223	14-104
Shore v. Splain, 49 App. D. C. 6, 258 Fed. 150	11-205, 11-610, 11-707	Smith v. United States, 72 App. D. C. 187, 112 Fed. (2d) 217	22-1501
Shugard v. Hoage, 67 App. D. C. 52, 89 Fed. (2d) 796	36-501	Smiths Transfer & Storage Co. v. Reliable Stores Corp., 61 App. D. C. 106, 58 Fed. (2d) 511	28-1803, 28-1921, 28-1922
Siegal v. United States, 61 App. D. C. 282, 61 Fed. (2d) 923	22-701	Smoot v. Heyl, 227 U. S. 518	1-228, 1-625
Silver v. Lansburgh & Bro., 72 App. D. C. 77, 111 Fed. (2d) 518	2-502	Snead v. Central of Georgia R. Co., 151 Fed. 608	44-402
Simmons v. District of Columbia, 53 App. D. C. 372, 290 Fed. 347	1-228	Snell v. United States, 16 App. D. C. 501	22-2401
Simmons v. Jaselli, 38 App. D. C. 242	16-1901	Snow v. Snow, 48 App. D. C. 448	16-403
Simmons v. Morrison, 13 App. D. C. 161	16-102	Snow v. Snow, 52 App. D. C. 39, 280 Fed. 1013	16-410
Simmons v. Simmons, 57 App. D. C. 216, 19 Fed. (2d) 690	16-403, 30-101, 30-102	Snowden v. United States, 2 App. D. C. 89	22-2801
Simon v. Simon, 58 App. D. C. 158, 26 Fed. (2d) 530	45-1101, 45-1104	Snyder v. Charles Levine, Inc., 65 App. D. C. 81, 80 Fed. (2d) 382	11-744, 11-746, 11-747
Simon v. United States, 37 App. D. C. 280	22-1401	Sommerville v. Williams, 12 App. D. C. 520	38-103
Simpkins v. McDermott, 65 App. D. C. 123, 81 Fed. (2d) 257	35-901	Sonnemann v. Loeb, 11 App. D. C. 143	30-208
Simpson v. Minnix, 30 App. D. C. 582	15-101, 15-204, 16-317	Soper v. Myers, 45 App. D. C. 286	45-819
Sims v. Rives, 66 App. D. C. 24, 84 Fed. (2d) 871	24-201, 24-203, 24-205, 24-209, 25-101, 25-107, 43-1511	Southern Bridge Co. v. United States Shipping Bd. Emergency Fleet Corp., 266 Fed. 747	29-201
Sincell v. Davis, 24 App. D. C. 218	28-2503	Southern Pac. Co. v. McGinnis, 174 Fed. 649	44-401
Sinclair v. District of Columbia, 192 U. S. 16	6-863, 11-316	Southern R. Co. v. Hawkins, 35 App. D. C. 313	16-1201, 16-1202, 18-716, 20-505
Sinclair v. United States, 49 App. D. C. 351, 265 Fed. 991	22-2405	Southern R. Co. v. Taylor, 57 App. D. C. 21, 16 Fed. (2d) 517	44-401
Singer v. Friedman, 66 App. D. C. 191, 85 Fed. (2d) 690	12-201	Spain v. St. Louis & S. F. R. Co., 151 Fed. 522	44-401
Sinnott v. Kenaday, 12 App. D. C. 115	11-504	Spang v. Roper, 13 Fed. Supp. 840	1-815
Sinnott v. Kenaday, 14 App. D. C. 1	11-504, 18-520, 20-610	Sparks v. Sparks, 25 App. D. C. 356	16-410
Sis v. Boorman, 11 App. D. C. 116	12-201, 16-1301, 18-202, 45-501, 45-603, 45-612	Speaks v. Hoage, 64 App. D. C. 324, 78 Fed. (2d) 208	36-501
Slack v. Perrine, 9 App. D. C. 128	16-410	Spector v. Weisman, 59 App. D. C. 280, 40 Fed. (2d) 792	30-208
Slater v. Taylor, 31 App. D. C. 100	22-2305	Speer v. Colbert, 200 U. S. 130	19-202
Sloan Shipyards Corp. v. United States Shipping Board, 258 U. S. 549	29-203	Spilman v. Geiger, 61 App. D. C. 164, 58 Fed. (2d) 890	45-915
Smallwood v. District of Columbia, 57 App. D. C. 58, 17 Fed. (2d) 210	1-223, 40-602, 40-603	Splain v. B. F. Goodrich Rubber Co., 53 App. D. C. 300, 290 Fed. 275	16-318, 42-101
Smeltzer v. St. Louis & S. F. R. Co., 158 Fed. 649	44-401	Spruill v. O'Toole, 64 App. D. C. 85, 74 Fed. (2d) 559	11-735
Smith v. American Bonding & Trust Co., 12 App. D. C. 192	16-102	Sprunt v. Direction Der Disconto Gesell- schaft, 61 App. D. C. 350, 63 Fed. (2d) 127	12-201
Smith v. Butler, 15 App. D. C. 345	16-1301	Staffan v. Zeust, 10 App. D. C. 260	16-515
Smith v. Cissel, 22 App. D. C. 318	16-1201	Stafford v. American Secur. & Trust Co., 60 App. D. C. 380, 55 Fed. (2d) 542	14-308
		Stallings v. Splain, 49 App. D. C. 38, 258 Fed. 510	23-401



		T	
Standard Sav. Bank v. Stone, 52 App. D. C.			
42, 280 Fed. 1016	12-301, 45-904		
Stanfield v. Vollbehr, 61 App. D. C. 239, 60		Tait v. Dante, 78 Fed. (2d) 303	18-605
Fed. (2d) 670	28-2404	Talbert v. United States, 42 App. D. C. 1	22-2201, 22-2203
Staples v. Warren, 46 App. D. C. 363	45-501		
Starr v. United States, 8 App. D. C. 552	15-201, 28-2405	Talbott v. Hill, 49 App. D. C. 96, 261 Fed.	12-201
	16-1301	244	
Staub v. Staub, 47 App. D. C. 180		Taliaferro v. Railway Terminal Warehouse	
Steele v. Harrison, 59 App. D. C. 69, 32 Fed.		Co., 59 App. D. C. 376, 43 Fed. (2d) 271	7-611, 47-703, 47-1101
(2d) 965	30-207, 30-208		
Steever v. Rickman, 109 U. S. 74	11-1507	Talty v. District of Columbia, 20 App. D. C.	
Stern v. Drew, 52 App. D. C. 191, 285 Fed.		489	11-205, 11-320, 17-101, 17-103
925	42-103	Talty v. Talty, 40 App. D. C. 587	18-202
Stern Co. of Washington v. Rosenberg, 67		Tatum v. United States, 71 App. D. C. 393,	
App. D. C. 99, 89 Fed. (2d) 843	11-744, 42-103, 45-915	110 Fed. (2d) 555	22-502
		Taylor v. Drury, 56 App. D. C. 266, 12 Fed.	
Sterrett v. National Safe Deposit, Sav. &		(2d) 489	12-201, 45-611
Trust Co., 10 App. D. C. 131	18-701	Taylor v. Leesnitzer, 37 App. D. C. 356	16-1301, 19-205
Stevens v. Gordon, 48 App. D. C. 604	38-103		
Stewart v. Baltimore & O. R. Co., 168 U. S.		Taylor v. Southern R. Co., 178 Fed. 380	44-401
445	16-1201	Taylor v. Taylor, 62 App. D. C. 316, 67 Fed.	
Stewart v. Johnston, 97 Fed. (2d) 548	24-402	(2d) 582	16-403
Stewart v. Stewart, 52 App. D. C. 323, 286		Taylor v. United States, 7 App. D. C. 27	22-2401
Fed. 987	16-401, 16-410, 16-419	Tendler v. Tendler, 56 App. D. C. 296, 12	
Stickel v. Stickel, 18 App. D. C. 149	16-410	Fed. (2d) 831	16-410
Stokes v. Hinden, 66 App. D. C. 34, 85 Fed.		Tenney v. Taylor, 1 App. D. C. 223	28-2401, 28-2402
(2d) 200	45-603, 45-604, 45-615	Tepper v. Fraser, 63 App. D. C. 174, 70	
Storey v. Storey, 30 App. D. C. 41	19-312	Fed. (2d) 778	47-701
Storror v. Concord Club, 63 App. D. C. 190,		Terminal Taxicab Co. v. Kutz, 241 U. S.	
70 Fed. (2d) 852	12-302	252	43-111, 43-122
Story v. Rives, 68 App. D. C. 325, 97 Fed.		Thaw v. Ritchie, 136 U. S. 519	11-316, 11-504, 21-204
(2d) 182	24-203, 24-208, 24-209, 24-402		
Story v. United States, 57 App. D. C. 3, 16		Thomas v. District of Columbia, 67 App. D. C.	
Fed. (2d) 342	22-105, 22-2405	179, 90 Fed. (2d) 424	1-223
Stoutenburgh v. Hennick, 129 U. S. 141	1-102	Thomas v. Murphy, 71 App. D. C. 69, 107	
Strasburger v. Dodge, 12 App. D. C. 37	28-2601	Fed. (2d) 268	11-907, 16-403, 18-106, 30-101
Strasburger v. Schram, 68 App. D. C. 87, 93		Thomas v. Ogilby, 59 App. D. C. 382, 44 Fed.	
Fed. (2d) 246	12-201	(2d) 890	11-1302
Street v. Maddux, 58 App. D. C. 42, 24 Fed.		Thomas v. Presbrey, 5 App. D. C. 217	11-320
(2d) 617	12-302	Thomas v. Young, 57 App. D. C. 282, 22 Fed.	
Street v. Stubblefield, 57 App. D. C. 276, 20		(2d) 588	18-101
Fed. (2d) 1017	18-301	Thompson v. Franklin Nat. Bank, 45 App.	
Strong v. Andros, 34 App. D. C. 278	12-305	D. C. 218	28-203, 28-407, 28-504
Sullivan v. District of Columbia, 19 App.		Thompson v. Park Sav. Bank, 64 App. D. C.	
D. C. 210	17-103	308, 77 Fed. (2d) 955	26-101, 26-102
Sullivan v. Goldman, 38 App. D. C. 319	17-101	Thompson v. Park Sav. Bank, 68 App. D. C.	
Supreme Commandery of United Order of		272, 96 Fed. (2d) 544	26-102
Golden Cross v. Bernard, 26 App. D. C.		Thompson v. Smith, 70 App. D. C. 65, 103	
169	35-901	Fed. (2d) 936	14-308, 19-101
Survivors of Seventh Georgia Regiment v.		Thompson v. Tanner, 53 App. D. C. 3, 287	
Larner, 55 App. D. C. 156, 3 Fed. (2d) 201	19-103	Fed. 980	13-108, 13-109, 13-111, 16-410
Suter v. Lockwood Dental Co., 45 App. D. C.		Thompson v. Thompson, 226 U. S. 551	16-415
92	16-301	Thompson v. United States, 30 App. D. C.	
Sutherland v. Kreisch, 59 App. D. C. 351, 41		352	22-105, 22-201, 22-701
Fed. (2d) 974	16-320	Thornhill v. Atlantic Life Ins. Co., 63 App.	
Swan v. United States, 54 App. D. C. 100,		D. C. 184, 70 Fed. (2d) 846	11-735, 45-822, 45-903, 45-910
295 Fed. 921	22-1507		
Sweeney v. District of Columbia, 72 App.		Throckmorton v. Holt, 180 U. S. 552	19-103
D. C. 30, 113 Fed. (2d) 25	47-1205	Tillinghast v. Tillinghast, 58 App. D. C. 107,	
Swenk v. Nicholls, 39 App. D. C. 350	28-616	25 Fed. (2d) 531	16-421, 16-422, 30-101, 30-103
Sykes v. Jenny Wren Co., 64 App. D. C. 379,		Tipp v. District of Columbia, 69 App. D. C.	
78 Fed. (2d) 729	17-101	400, 102 Fed. (2d) 264	11-603
Symons v. Symons, 51 App. D. C. 69, 275		Tipping v. Tipping, 65 App. D. C. 222, 82	
Fed. 1015	16-419	Fed. (2d) 828	16-403
		Todd v. Kauffman, 8 Mackey (19 D. C.) 204	16-1501



Toledo Computing Scales Co. v. Miller, 38 App. D. C. 237	13-103	United States v. Ainsworth, 3 App. D. C. 483	23-105
Tolman v. Tolman, 1 App. D. C. 299	16-415	United States v. Antikamnia Chemical Co., 231 U. S. 654	33-103
Tolty v. Tolty, 40 App. D. C. 587	45-814	United States v. Baltimore & O. R. Co., 26 App. D. C. 581	11-305, 11-324, 11-325
Tomlin v. United States, 66 App. D. C. 32, 84 Fed. (2d) 879	24-201	United States v. Bank of New York Nat. Banking Assn., 219 Fed. 648	28-104, 28-124
Tomlinson v. United States, 68 App. D. C. 106, 93 Fed. (2d) 652	22-105, 22-2901, 22-3202	United States v. Boeckmann, 176 Fed. 382	33-103
Topham v. Topham, 50 App. D. C. 229, 269 Fed. 1013	16-419	United States v. Boyd, 8 App. D. C. 440	28-2405
Totten v. Harlowe, 66 App. D. C. 373, 88 Fed. (2d) 755	45-611, 45-614	United States v. Burroughs, 289 U. S. 159	11-305, 11-322, 23-105
Towles v. Tanner, 21 App. D. C. 530	28-201, 28-806	United States v. Burroughs, 62 App. D. C. 163, 65 Fed. (2d) 796	23-105
Towles v. United States, 19 App. D. C. 471	22-1401	United States v. Cadarr, 197 U. S. 475	23-104
Towson v. Towson, 49 App. D. C. 45, 258 Fed. 571	16-410, 16-415	United States v. Cadarr, 24 App. D. C. 143	17-101, 23-105
Tractenberg v. United States, 53 App. D. C. 396, 293 Fed. 476	22-2201	United States v. California Co-op. Canneries, 279 U. S. 553	17-101
Tracy v. Atwell, 58 App. D. C. 397, 32 Fed. (2d) 392	20-506	United States v. Campbell, 179 Fed. 762	22-1509
Trans-Atlantic Trust Co. v. Pagenstecher, 53 App. D. C. 42, 287 Fed. 1019	17-101	United States v. Capital Trac. Co., 38 App. D. C. 469	23-101, 44-202, 44-203, 44-207
Travers v. United States, 6 App. D. C. 450	22-2401	United States v. Cella, 37 App. D. C. 423	22-1509, 23-101, 23-105
Tribby v. O'Neal, 39 App. D. C. 467	11-744, 11-745	United States v. Charles L. Heinle Specialty Co., 175 Fed. 299	33-103
Trice v. Trice, 55 App. D. C. 328, 5 Fed. (2d) 543	16-403	United States v. Chicago, M. & P. S. R. Co., 218 Fed. 701	44-401
Tri-State Motor Corp. v. Standard Steel Car Co., 51 App. D. C. 109, 276 Fed. 631	16-301, 28-2403, 49-201	United States v. Crandol, 233 Fed. 331	14-201
Trometer v. District of Columbia, 24 App. D. C. 242	14-307	United States v. Doheny, 56 App. D. C. 86, 10 Fed. (2d) 651	11-1001, 23-101
Tryon v. Southern Realty Corp., 51 App. D. C. 55, 274 Fed. 135	29-204, 29-702, 29-707	United States v. Eliason, 16 Pet. (41 U. S.) 291	1-101
Tschiffely v. Tschiffely, 70 App. D. C. 386, 107 Fed. (2d) 191	12-303	United States v. Evans, 28 App. D. C. 264	22-2401, 22-2902, 24-401
Tubins v. District of Columbia, 21 App. D. C. 267	17-103	United States v. Evans, 30 App. D. C. 58	23-105
Tuckerman v. Mearns, 49 App. D. C. 153, 262 Fed. 607	11-325	United States v. Fair, 235 Fed. 1015	11-1508
Tumulty v. District of Columbia, 69 App. D. C. 390, 102 Fed. (2d) 254	47-701, 47-712, 47-1005, 47-1201, 47-1203, 47-1209, 47-1212, 47-1213, 47-1301, 47-1401, 47-1408	United States v. Fall, 56 App. D. C. 83, 10 Fed. (2d) 648	11-1001, 23-101
Tuohy v. Hanlon, 18 App. D. C. 225	11-504	United States v. Fitzpatrick, 13 Wall. (80 U. S.) 568	11-1101
Tuohy v. Trail, 19 App. D. C. 79	12-201, 14-302, 20-501	United States v. Geare, 54 App. D. C. 30, 293 Fed. 997	22-2405
Turner v. American Security & Trust Co. 29 App. D. C. 460	19-101	United States v. Griffith, 55 App. D. C. 123, 2 Fed. (2d) 925	11-1401, 11-1402, 49-301
Turner v. Fendall, 1 Cranch (5 U. S.) 117	49-301	United States v. Groome, 13 App. D. C. 460	16-102
Turner v. Henning, 49 App. D. C. 183, 262 Fed. 637	38-101	United States v. Johnson, 177 Fed. 313	33-103
Turner v. Metz, 55 App. D. C. 177, 3 Fed. (2d) 348	45-904	United States v. Mace, 281 Fed. 635	16-1701
Turner v. United States, 57 App. D. C. 39, 16 Fed. (2d) 535	22-1202, 22-2901, 22-2902	United States v. Maloney, 4 App. D. C. 505	28-2405
Tyner v. United States, 23 App. D. C. 324	11-316	United States v. McMillan, 165 U. S. 504	11-1507
U		United States v. Mills, 11 App. D. C. 500	11-602
Uhler v. Adams, 1 App. D. C. 392	18-215	United States v. Moreland, 258 U. S. 433	22-903, 24-401
Underwood v. Underwood, 50 App. D. C. 323, 271 Fed. 553	16-403	United States v. Plisco (D. C.-D. C.), 22 Fed. Supp. 242	22-1501, 22-1504
Union Timber Products Co. v. United States Shipping Bd. Emergency Fleet Corp., 252 Fed. 320	29-201	United States v. Pumphrey, 11 App. D. C. 44	28-2405
Union Tool Co. v. Wilson, 259 U. S. 107	11-305, 11-315	United States v. Ringgold, 8 Pet. (33 U. S.) 150	11-1101
United States, Ex parte, 242 U. S. 27	24-101	United States v. Ross, 298 Fed. 64	11-1508
		United States v. St. Louis, S. W. R. Co., 189 Fed. 954	44-401
		United States v. Securities Corp. General, 55 App. D. C. 256, 4 Fed. (2d) 619	17-101
		United States v. Simms, 1 Cranch (5 U. S.) 252	13-222
		United States v. Sing Tuck, 194 U. S. 161	16-801



United States v. Sixty-eight Cases of Syrup, 172 Fed. 781	33-103	United States ex rel. Greathouse v. Hurley, 61 App. D. C. 360, 63 Fed. (2d) 137	9-101, 49-301
United States v. Southern R. Co., 164 Fed. 347	44-401	United States ex rel. Hammond v. Custis, 37 App. D. C. 449	16-1001
United States v. Taliaferro, 290 Fed. 214	11-317	United States ex rel. Hine v. Morse, 218 U. S. 493	16-1301, 21-204, 21-210, 45-1101, 45-1104
United States v. Terranova, 7 Fed. Supp. 989	1-815	United States ex rel. Holmead v. Barnard, 29 App. D. C. 431	11-208
United States v. Von Jenny, 39 App. D. C. 377	11-607	United States ex rel. Johnson v. Morley Con- struction Co., 98 Fed. (2d) 78	1-815
United States v. Watkins, Fed. Cas. 16649	11-316	United States ex rel. Johnson v. Morley Construction Co., 17 Fed. Supp. 378	1-815
United States v. West, 8 App. D. C. 59	16-1901	United States ex rel. Kreh v. Ingram, 38 App. D. C. 379	35-1201
United States v. Witbeck, 72 App. D. C. 231, 113 Fed. (2d) 185	14-303	United States ex rel. McBride v. Schurz, 12 Otto (102 U. S.) 378	11-305, 11-316
United States v. Wood, 299 U. S. 123	11-606, 23-107	United States ex rel. McDonald v. Lane, 49 App. D. C. 234	16-1001
United States Casualty Co. v. District of Co- lumbia, 71 App. D. C. 92, 107 Fed. (2d) 652	1-804	United States ex rel. McDuffie v. Hawley, 50 App. D. C. 137, 269 Fed. 479	2-308, 16-1001
United States Casualty Co. v. Hoage, 64 App. D. C. 284, 77 Fed. (2d) 542	36-501	United States ex rel. McKenzie v. Fisher, 39 App. D. C. 7	16-1001
United States Elec. Lighting Co. v. Metro- politan Club, 6 App. D. C. 536	17-101	United States ex rel. Moser v. Myer, 38 App. D. C. 13	16-1001
United States Elec. Lighting Co. v. Sullivan, 22 App. D. C. 115	16-1201	United States ex rel. Mulvihill v. Clabaugh, 21 App. D. C. 440	11-205
United States ex rel. Anderson v. Simon, 50 App. D. C. 199, 269 Fed. 715	16-1001	United States ex rel. Newman v. City & Suburban R. Co., 42 App. D. C. 417	16-1001
United States ex rel. Arant v. Lane, 249 U. S. 367	12-201, 16-1001	United States ex rel. Norris v. Forbes, 51 App. D. C. 248, 278 Fed. 331	16-1001
United States ex rel. Arlington & F. Auto R. Co. v. Elgen, 68 App. D. C. 392, 98 Fed. (2d) 264	40-603	United States ex rel. Ordmann v. Cummings, 66 App. D. C. 107, 85 Fed. (2d) 273	16-302, 16-303, 16-312, 16-315, 16-316
United States ex rel. Ashley v. Roper, 48 App. D. C. 69	16-1001	United States ex rel. Phillips v. Ballinger, 35 App. D. C. 520	16-1001
United States ex rel. Baldwin v. Robertson, 265 U. S. 168	17-101	United States ex rel. Queen v. Alvey, 182 U. S. 456	11-205
United States ex rel. Boucher v. Murphy, 11 Fed. Supp. 572	1-815	United States ex rel. Reynolds v. Lane, 45 App. D. C. 50	16-1001
United States ex rel. Bowlegs v. Lane, 43 App. D. C. 494	16-1001	United States ex rel. Robertson v. Barnard, 24 App. D. C. 8	11-745, 16-331, 17-101
United States ex rel. Bracey v. Hill, 77 Fed. (2d) 970	22-502, 24-203	United States ex rel. Russell v. District of Columbia, 50 App. D. C. 296, 271 Fed. 370	16-1001
United States ex rel. Coal Co. v. Lane, 46 App. D. C. 443	16-1001	United States ex rel. Schwerdtfeger v. Brownlow, 45 App. D. C. 412	16-1001
United States ex rel. Connor v. District of Columbia, 61 App. D. C. 288, 61 Fed. (2d) 1015	5-412	United States ex rel. Skinner & Eddy Corp. v. McCarl, 275 U. S. 1	16-1001, 47-107
United States ex rel. Corbin v. Doyle, 68 App. D. C. 100, 93 Fed. (2d) 646	31-620	United States ex rel. Smith v. Mathues, 284 Fed. 368	22-903
United States ex rel. Cromwell v. Doyle, 69 App. D. C. 215, 99 Fed. (2d) 448	31-102	United States ex rel. Stevens v. Richards, 33 App. D. C. 410	16-1201
United States ex rel. Crupper v. Newman, 47 App. D. C. 345	8-108	United States ex rel. Stowell v. Deming, 57 App. D. C. 223, 19 Fed. (2d) 697	11-315
United States ex rel. Daly v. Macfarland, 28 App. D. C. 552	1-102	United States ex rel. Thomson v. Custis, 35 App. D. C. 247	16-1001
United States ex rel. Dascomb v. Board of Tax Appeals, 56 App. D. C. 392, 16 Fed. (2d) 337	11-208	United States ex rel. Todd v. Gongwer, 37 App. D. C. 555	16-1001
United States ex rel. Denney v. Callahan, 54 App. D. C. 61, 294 Fed. 992	31-102, 31-620	United States ex rel. Turnover v. Charles H. Tompkins Co., 63 App. D. C. 332, 72 Fed. (2d) 383	1-804
United States ex rel. Estabrook v. Otis, 18 Fed. (2d) 689	11-1508	United States ex rel. Vause v. McCarthy, 250 Fed. 800	22-1509
United States ex rel. Eure v. Borden, 65 App. D. C. 84, 80 Fed. (2d) 527	11-201, 11-703, 11-723, 17-104, 49-301	United States ex rel. W. A. Pierce Co. v. Fair- cloth, 49 App. D. C. 323, 265 Fed. 963	1-804
United States ex rel. Gillem v. Carusi, 59 App. D. C. 46, 32 Fed. (2d) 942	31-114, 31-620		
United States ex rel. Goodenow v. Aetna Casualty & Surety Co., 5 Fed. (2d) 412	1-804		



United States ex rel. Wylie v. W. S. Barstow & Co., 79 Fed. (2d) 496	1-815	Warner v. Warner, 58 App. D. C. 34, 24 Fed. (2d) 609	16-413
United States Fidelity & Guar. Co. v. Klein, 60 App. D. C. 354, 54 Fed. (2d) 828	28-2407	Washington A. & Mt. V. R. Co. v. Downey, 236 U. S. 190	44-401
United States Fidelity & Guar. Co. v. Wrenn, 67 App. D. C. 94, 39 Fed. (2d) 838	16-301, 16-302, 16-308, 16-323	Washington & G. R. Co. v. Tobriner, 147 U. S. 571	28-2701
United States Sav. Bank v. Morgenthau, 66 App. D. C. 234, 85 Fed. (2d) 811	26-101	Washington Asphalt Block & Tile Co. v. Mackey, 15 App. D. C. 410	16-1201
United States Shipping Bd. v. Greenwald, 16 Fed. (2d) 948	16-1201	Washington Fidelity Nat. Ins. Co. v. Burton, 287 U. S. 97	35-203
United States Shipping Bd. Emergency Fleet Corp. v. Western Union Tel. Co., 275 U. S. 415	29-201, 43-317	Washington Gas Light Co. v. Dann, 63 App. D. C. 142, 70 Fed. (2d) 746	29-216, 43-501
United States Shipping Board Merchant Fleet Corp. v. Hirsch Lbr. Co., 59 App. D. C. 116, 35 Fed. (2d) 1010	16-313	Washington Loan & Trust Co. v. Allman, 63 App. D. C. 116, 70 Fed. (2d) 282	26-101
United States Shipping Bd. Merchant Fleet Corp. v. United States Fidelity & Guar. Co., 64 App. D. C. 247, 77 Fed. (2d) 370	16-102	Washington Loan & Trust Co. v. Colby 71 App. D. C. 236, 108 Fed. (2d) 743	28-802, 28-805
United Surety Co. v. American Fruit Product Co., 238 U. S. 140	16-310, 16-311, 16-316	Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church, 54 App. D. C. 14, 293 Fed. 833	20-610
Universal Dealers Co. v. Cromelin, 71 App. D. C. 234, 109 Fed. (2d) 828	12-401	Washington Loan & Trust Co. v. Cowgill, 66 App. D. C. 89, 85 Fed. (2d) 255	28-301, 28-402, 28-406, 28-409
Utermehle v. McGreal, 1 App. D. C. 359	45-612	Washington Loan & Trust Co. v. Darling, 21 App. D. C. 132	12-201
Utermehle v. Norment, 197 U. S. 40	11-501	Washington Loan & Trust Co. v. Hammond, 51 App. D. C. 260, 278 Fed. 569	19-110, 45-102
V		Washington Loan & Trust Co. v. Susquehanna Coal Co., 26 App. D. C. 149	16-302, 16-303, 16-308, 16-312, 16-326
Vanderbilt v. Com. Int. Rev., 93 Fed. (2d) 360	29-601	Washington Market Co. v. Hoffman, 11 Otto (101 U. S.) 112	10-137
Van Ness v. Van Ness, 6 How. (47 U. S.) 62	11-316	Washington Nat. Bldg. & Loan Assn. v. Fiske, 20 App. D. C. 514	26-406
Velati v. Dante, 39 App. D. C. 372	45-106	Washington Nat. Bldg. & Loan Assn. v. Pifer, 31 App. D. C. 434	28-2703
Vernon v. Provident Relief Assn., 57 App. D. C. 236, 19 Fed. (2d) 710	17-101	Washington R. & Elec. Co. v. District of Columbia, 56 App. D. C. 134, 10 Fed. (2d) 999	43-208, 44-202, 44-203, 44-205
Vertner v. Vertner, 63 App. D. C. 179, 70 Fed. (2d) 783	13-108	Washington R. & Elec. Co. v. District of Columbia, 64 App. D. C. 243, 77 Fed. (2d) 366	43-412, 43-704
Vestry of St. John's Parish v. Bostwick, 8 App. D. C. 452	11-503, 11-504, 19-101, 19-103, 19-302, 19-307	Washington-Southern Nav. Co. v. Baltimore & P Steamboat Co., 263 U. S. 629	11-1508
Vincennes Steel Corp. v. Miller, 94 Fed. (2d) 347	11-1512	Washington Terminal Co. v. Hoage, 65 App. D. C. 33, 79 Fed. (2d) 158	36-501
Voehl v. Indemnity Ins. Co., 288 U. S. 162	36-501	Washington Terminal Co. v. Sampson, 53 App. D. C. 179, 289 Fed. 577	44-401
Vogt v. Vogt, 26 App. D. C. 46	45-812	Waters v. Taylor, 52 App. D. C. 135, 284 Fed. 639	15-107
Von Rosen v. Dean, 59 App. D. C. 359, 41 Fed. (2d) 982	26-601, 28-2703, 28-2704	Watkins-Whitney v. Thyson, 65 App. D. C. 404, 78 Fed. (2d) 1022	12-304
W		Watson v. Carver, 27 App. D. C. 555	7-307
Wade v. United States, 33 App. D. C. 29	22-1504	Watts v. Splain, 50 App. D. C. 31, 267 Fed. 333	23-401
Wagenhurst v. Wineland, 22 App. D. C. 356	13-301	Watts v. Splain, 51 App. D. C. 129, 277 Fed. 335	23-401
Waggaman v. Dulany, 48 App. D. C. 14	18-202	Weaver v. Koester, 54 App. D. C. 80, 294 Fed. 1011	45-820, 45-904
Wagner v. White, 38 App. D. C. 554	24-301, 24-303	Weaver v. United States, 55 App. D. C. 26, 299 Fed. 893	22-2801
Walker v. Gish, 260 U. S. 447	1-228, 1-625	Webb v. Lohnes, 68 App. D. C. 310, 96 Fed. (2d) 582	17-104, 18-717
Walker v. Gish, 51 App. D. C. 4, 273 Fed. 366	1-625	Webb v. Sharp, 13 Wall. (80 U. S.) 14	45-915
Walker v. Hazen, 67 App. D. C. 183, 90 Fed. (2d) 502	7-209, 16-604	Webster v. Splain, 45 App. D. C. 567	23-401
Walker v. Lyon, 6 App. D. C. 484	16-1301		
Walker v. Warner, 31 App. D. C. 76	14-201, 45-501		
Wall v. De Mitkiewicz, 9 App. D. C. 109	42-103		
Wallace v. United States, 18 App. D. C. 152	22-2401		
Waltenberg v. Waltenberg, 54 App. D. C. 383, 298 Fed. 842	16-403		
Wardman-Justice Motors v. Petrie, 59 App. D. C. 262, 39 Fed. (2d) 512	16-1811, 16-1814		



Wedderburn v. Wedderburn, 54 App. D. C. 193, 295 Fed. 1014	16-415	Willard v. Wood, 1 App. D. C. 44	12-201
Weeks v. United States ex rel. Creary, 51 App. D. C. 195, 277 Fed. 594	16-1001	Williams v. American Employers Ins. Co., 71 App. D. C. 153, 107 Fed. (2d) 953	36-501
Weigand v. District of Columbia, 22 App. D. C. 559	33-301	Williams v. Paine, 169 U. S. 55, 42 L. Ed. 658, 18 Sup. Ct. 279	45-408—45-410
Weinstein v. Julius Lansburgh Furn. & Carpet Co., 51 App. D. C. 271, 278 Fed. 580	16-102	Williams v. Paine, 7 App. D. C. 116	45-401
Weisberg v. United States, 49 App. D. C. 28, 258 Fed. 284	22-105, 22-2201, 22-2205	Williams v. United States, 3 App. D. C. 335	22-2201
Welch v. Cook, 97 U. S. 541	47-801	Williams v. United States, 55 App. D. C. 239, 4 Fed. (2d) 432	22-105
Welch v. Lynch, 30 App. D. C. 122	12-102, 14-201, 18-101, 18-215	Williams v. United States, 71 App. D. C. 377, 110 Fed. (2d) 554	22-2701
Welch v. Welch, 57 App. D. C. 212, 19 Fed. (2d) 686	20-216	Williams v. Williams (D. C.—D. C.), 33 Fed. Supp. 612	16-403, 16-410
Wells v. Alropa Corp., 65 App. D. C. 281, 82 Fed. (2d) 887	12-201, 28-107	Williams v. Williams, 24 App. D. C. 214	11-504, 20-504
Wells v. Wells, 11 App. D. C. 392	16-410	Willis v. District of Columbia, 54 App. D. C. 191, 295 Fed. 1012	40-617
Werner v. Frederick, 68 App. D. C. 158, 94 Fed. (2d) 627	19-309	Willis v. Eastern Trust & B. Co., 169 U. S. 295	11-735, 45-603
West v. McLaughlin, 57 App. D. C. 163, 18 Fed. (2d) 813	11-504, 18-612, 11-501	Willis v. United States, 69 App. D. C. 129, 99 Fed. (2d) 362	7-209, 16-601, 16-607, 16-634
West v. Smith, 8 How. (49 U. S.) 402	11-501	Willner v. Hazen, 71 App. D. C. 373, 111 Fed. (2d) 511	7-308, 47-1101
West Coast Hotel Co. v. Parrish, 300 U. S. 379	36-401, 36-403	Wills v. Jones, 13 App. D. C. 482	30-208
Western Union Tel. Co. v. Lipscomb, 22 App. D. C. 104	16-1201, 20-505	Wills v. Maddox, 45 App. D. C. 128	45-102
Wheeler v. McBlair, 5 App. D. C. 375	45-603	Wilson v. Aderhold, 84 Fed. (2d) 806	24-402
Wheeler v. Palmer, 42 App. D. C. 395	23-401	Wilson v. Newburgh, 42 App. D. C. 407	16-501
Wheeler v. Thomas (D. C.—D. C.), 31 Fed. Supp. 702	16-308, 16-312	Windell v. Holland American Line, 40 App. D. C. 1	13-103
Whelan v. Welch, 50 App. D. C. 173, 269 Fed. 699	12-102	Winfree v. Northern P. R. Co., 164 Fed. 698	44-401
Whelpley v. Ross, 25 App. D. C. 207	26-406, 28-2701, 28-2702	Winfree v. Northern Pac. R. Co., 173 Fed. 65	44-401, 44-404
Whipp v. Glueck, 61 App. D. C. 118, 58 Fed. (2d) 523	28-407, 28-2705	Winslow v. Baltimore & O. R. Co., 208 U. S. 59	7-1212
Whitaker v. Hitt, 52 App. D. C. 149, 285 Fed. 797	23-401	Winslow v. Baltimore & O. R. Co., 28 App. D. C. 126	17-101
Whitaker v. Macfadden Publications, 70 App. D. C. 165, 105 Fed. (2d) 44	13-103	Winston v. Winston, 50 App. D. C. 321, 271 Fed. 551	16-401
White v. Central Dispensary & Emergency Hosp., 69 App. D. C. 122, 99 Fed. (2d) 355	29-201, 29-601	Winter v. Hazen-Latimer Co., 42 App. D. C. 469	38-103, 38-106, 38-107
White v. Connecticut General Life Ins. Co., 34 App. D. C. 460	14-302, 16-901	Wirt v. Stubblefield, 17 App. D. C. 283	16-701, 28-203, 28-407
White v. District of Columbia, 55 App. D. C. 197, 4 Fed. (2d) 163	1-224, 1-226, 40-301, 40-603	Wise v. Herzog, 72 App. D. C. 335, 114 Fed. (2d) 486	11-805
Whitfield v. Hoage, 63 App. D. C. 237, 71 Fed. (2d) 690	36-501	Witters v. United States, 70 App. D. C. 316, 106 Fed. (2d) 837	22-2205
Whittaker v. Brannan, 252 Fed. 556	24-403	Wogan Bros., Inc. v. American Sugar Ref. Co., 215 Fed. 273	11-305
Whitwell v. United States ex rel. Selden, 61 App. D. C. 169, 58 Fed. (2d) 895	31-102	Wolf, In re, 27 Fed. 606	11-316
Wielar v. Garner, 4 App. D. C. 329	16-301	Wood v. White, 68 App. D. C. 341, 97 Fed. (2d) 646	40-403
Wiggins v. Mayer, 57 App. D. C. 293, 22 Fed. (2d) 869	18-607, 20-505	Woodbury v. District of Columbia, 67 App. D. C. 278, 92 Fed. (2d) 202	7-401, 7-406
Wiggins Ferry Co. v. Ohio & M. R. Co., 142 U. S. 396	13-301	Woodward v. Union Trust Co., 49 App. D. C. 173, 262 Fed. 627	38-110, 38-118
Wight v. Davidson, 181 U. S. 371	43-1501, 43-1511	Woodward v. United States, 38 App. D. C. 323	22-1202, 22-2201
Wilkes v. Wilkes, 18 App. D. C. 90	18-202	Woodward & Lothrop v. Union Trust Co., 49 App. D. C. 173, 262 Fed. 627	38-103
Wilkins & Co. v. Hillman, 8 App. D. C. 469	16-301	Woolen v. Lorenz, 68 App. D. C. 389, 98 Fed. (2d) 261	12-101
Wilkinson v. Dougherty, 58 App. D. C. 81, 24 Fed. (2d) 1007	7-108, 7-122, 7-204, 7-208, 7-209	Wright v. Pitts, 62 App. D. C. 217, 66 Fed. (2d) 197	45-614
Wilkinson v. McKimmie, 36 App. D. C. 336	13-401	Wulzen, In re, 235 Fed. 362	39-401
Willard v. Crook, 21 App. D. C. 237	28-123, 28-507		



## Y

Yeager v. United States, 16 App. D. C. 356 22-105,  
22-2801  
Yeager v. United States, 59 App. D. C. 11,  
32 Fed. (2d) 402 22-1202, 22-1401  
Young v. Bank of Alexandria, 4 Cranch. (8  
U. S.) 384 49-301  
Young v. Bank of Alexandria, 5 Cranch. (9  
U. S.) 45 11-316  
Young v. Clarendon Tp., 132 U. S. 340 45-501  
Young v. Hesse, 58 App. D. C. 362, 30 Fed.  
(2d) 986 11-905, 11-907  
Young v. Hoage, 67 App. D. C. 150, 90 Fed.  
(2d) 395 36-501  
Young v. Munsey Trust Co., 72 App. D. C. 73,  
111 Fed. (2d) 514 45-802  
Young v. Nicholson, 70 App. D. C. 351, 107  
Fed. (2d) 177 15-304, 15-308, 15-309

Young v. Norris Peters Co., 27 App. D. C.  
140 11-503, 19-313, 45-802  
Young v. Warner, 6 App. D. C. 433 13-401  
Young Women's Christian Association v.  
French, 187 U. S. 401 18-701

## Z

Zerbst v. Kidwell, 92 Fed. (2d) 756 24-402  
Zerega v. United States, 59 App. D. C. 67,  
32 Fed. (2d) 963 11-622, 22-1504, 22-1508  
Zeust v. Staffan, 16 App. D. C. 141 18-215  
Zibell v. Meacham & Babcock Shipbldg. Co.,  
56 App. D. C. 385, 16 Fed. (2d) 330 13-103  
Zikos v. Oregon R. & Nav. Co., 179 Fed. 893 44-401  
Zinkhan v. District of Columbia, 50 App.  
D. C. 312, 271 Fed. 542 24-415  
Zirkle v. Daly, 60 App. D. C. 344, 54 Fed.  
(2d) 455 26-601, 28-2701, 28-2703



## REVERSE TABLE OF CASES

### A

Aaronson; Harding v.  
 Abramson; Abramson v.  
 Acacia Mut. Life Ins. Co.;  
     Duehay v.  
 Acker; Acker v.  
 Adams; Creel v.  
 Adams; Morgan v.  
 Adams; Uhler v.  
 Aderhold; Aderhold v.  
 Aderhold; Johnson v.  
 Aderhold; Reid v.  
 Aderhold; Wilson v.  
 Adkins; Children's Hosp. v.  
 Adkins; Costigan v.  
 Aetna Casualty & Surety Co.;  
     United States ex rel. Goode-  
     now v.  
 Ainsworth; United States v.  
 Alaska; Walsh v.  
 Alaska S. S. Co.; Cook v.  
 Alexander; Alexander v.  
 Alexander; Craighead v.  
 Alexander; Mare v.  
 Alexander; Munsey Trust Co. v.  
 Allan E. Walker, Inc.; Bailey v.  
 Allen; Allen v.  
 Allen; Cush v.  
 Allen; Frey v.  
 Allen, Reed v.  
 Allen; Sanders v.  
 Allen; Seaside Nat. Bank v.  
 Allen E. Walker & Co.; Bailey v.  
 Allen E. Walker & Co.; Brown v.  
 Allman; Washington Loan &  
     Trust Co. v.  
 Alropa Corp.; Wells v.  
 Alsop; Fedarwisch v.  
 Alton; Colonna v.  
 Alvey; United States ex rel.  
     Queen v.  
 Ambrogi; Baldi v.  
 Ambrose; Miller v.  
 American Automobile Assn.; Mer-  
     rick v.  
 American Bonding & Trust Co.;  
     Smith v.  
 American Employers Ins. Co.;  
     Williams v.  
 American Fruit Product Co.;  
     United Surety Co. v.  
 American Oil Co.; District of Co-  
     lumbia v.  
 American R. Exp. Co.; Harris v.  
 American Security & Trust Co.;  
     Biscayne Trust Co. v.

American Security & Trust Co.;  
     Bunten v.  
 American Security & Trust Co.;  
     Dougherty v.  
 American Security & Trust Co.;  
     Gracie v.  
 American Security & Trust Co.;  
     Huffines v.  
 American Security & Trust Co.;  
     Hurdle v.  
 American Security & Trust Co.;  
     Jordan v.  
 American Security & Trust Co.;  
     Lewis v.  
 American Security & Trust Co.;  
     Mayer v.  
 American Security & Trust Co.;  
     Stafford v.  
 American Security & Trust Co.;  
     Turner v.  
 American Sugar Ref. Co.; Wogan  
     Bros., Inc. v.  
 Anchor Line; Lancer v.  
 Anderson; Reid v.  
 Andros; Strong v.  
 Antikamnia Chemical Co.; United  
     States v.  
 Archer; Ambler v.  
 Archer; Drazich v.  
 Ashley; Armstrong v.  
 Ashley; Bradshaw v.  
 Associated Retail Credit Men;  
     Clark v.  
 Associates Inv. Co.; Minick v.  
 Atchison, T. & S. F. R. Co.; Mc-  
     Cabe v.  
 Atkinson; Alfred Richards Brick  
     Co. v.  
 Atkinson; Atkinson v.  
 Atlantic Life Ins. Co.; Thornhill  
     v.  
 Atwell; Tracy v.  
 Augusta; Marshall v.  
 Auth; G. G. Loehler Constr. Co. v.  
 Avignone; Castleman v.

### B

Bachrach; Palm v.  
 Baetjer; Colbert v.  
 Bailey; District of Columbia v.  
 Bailey; Phillips v.  
 Baker; Middle States Loan v.  
 Baker; Newman v.  
 Baldwin; Kiess v.  
 Ball; Danenhower v.  
 Ball; District of Columbia v.

Ballinger; United States ex rel.  
     Phillips v.  
 Baltimore & O. R. Co.; Brown v.  
 Baltimore & O. R. Co.; Stewart v.  
 Baltimore & O. R. Co.; United  
     States v.  
 Baltimore & O. R. Co.; Winslow v.  
 Baltimore & P. R. Co.; Beasley v.  
 Baltimore & P. R. Co.; Commis-  
     sioners of District of Colum-  
     bia v.  
 Baltimore & P. Steamboat Co.;  
     Washington-Southern Nav. Co.  
     v.  
 Bankers Trust Co.; National City  
     Bank v.  
 Bank of Alexandria; Young v.  
 Bank of Discount; Lyons v.  
 Bank of New York Nat. Banking  
     Assn.; United States v.  
 Bank of Potomac; McLaughlin v.  
 Barker Painting Co.; Local Union  
     No. 368 v.  
 Barnard; United States ex rel.  
     Holmead v.  
 Barnard; United States ex rel.  
     Robertson v.  
 Barnes; Addison v.  
 Barnum; Nashville Interurban R.  
     Co. v.  
 Bartlett; Loring v.  
 Bateman; Bateman v.  
 Bateman; Plumb v.  
 Beavans; Ruppert v.  
 Bell; Galloway v.  
 Bell; Larrabee v.  
 Bell; Rhodes v.  
 Belt; Magruder v.  
 Bennett; Beard v.  
 Benton; Drum v.  
 Bergheimer; Bergheimer v.  
 Bergling; Hamilton v.  
 Berlin; Ohio Nat. Bank v.  
 Berman; Labofish v.  
 Bernard; Supreme Commandery  
     of United Order of Golden  
     Cross v.  
 Bernsdorff; Bernsdorff v.  
 Best; Atkins v.  
 Beyer; International Seal Co. v.  
 B. F. Goodrich Rubber Co.;  
     Splain v.  
 B. H. Stinemetz & Son Co.;  
     Saks v.  
 Bigelow; James B. Lambie Co. v.  
 Bigger; Barrett v.



Bippus; Richards v.  
 Blandy; Blandy v.  
 Blessing; Hazard v.  
 Bliss; Bliss v.  
 Block; Hirsh v.  
 Bloedorn; Bloedorn v.  
 Board of Comrs.; La Forest v.  
 Board of Tax Appeals; United States ex rel. Dascomb v.  
 Boarman; Sis v.  
 Boeckmann; United States v.  
 Boggan; Pumphrey v.  
 Borden; United States ex rel. Eure v.  
 Bostwick; Vestry of St. John's Parish v.  
 Botkin; Brosius v.  
 Bowers; Del Vecchio v.  
 Bowles; Ockstadt v.  
 Bowling Green White Stone Co.; Rhodes v.  
 Boyd; Camp v.  
 Boyd; United States v.  
 Bradley; McKay v.  
 Brainerd; Morse v.  
 Brannan; Whittaker v.  
 Bridgeport Broadcasting Station; General Broadcasting System v.  
 Bright; Fifth Congregational Church v.  
 Brooke; District of Columbia v.  
 Brooks; Dickinson v.  
 Brophy; Green v.  
 Brosnan; Brosnan v.  
 Brown; Ambrose v.  
 Brown; Bradford v.  
 Brown; Dengel v.  
 Brown; Electrical Workers Ben. Assn. v.  
 Brown; Gwin v.  
 Brown; Hutchison v.  
 Brown; McMurray v.  
 Brown; Montgomery v.  
 Browning; Richardson v.  
 Brownlow; Beyer v.  
 Brownlow; Briggs v.  
 Brownlow; Edwards v.  
 Brownlow; Schwartz v.  
 Brownlow; United States ex rel. Schwerdtfeger v.  
 Bryan; National Capital Bank v.  
 Bryan; Ofenstein v.  
 Bryant; Manogue v.  
 Bryant; Secrist v.  
 Buckley; Dowling v.  
 Buck's Stove & Range Co.; Gompers v.  
 Burch; Metropolitan Life Ins. Co. v.  
 Burdette; Burdette v.  
 Burdick; Burdick v.  
 Burg; Arms v.  
 Burns; District of Columbia v.  
 Burns; Hayes v.  
 Burnstine; Page v.

Burr; Leach v.  
 Burris; Fidelity & Casualty Co. v.  
 Burroughs; Burroughs v.  
 Burroughs; United States v.  
 Burrowes; Burrowes v.  
 Bursey; Lyon v.  
 Burton; Washington Fidelity Nat. Ins. Co. v.  
 Butler; Smith v.

C

Cadarr; United States v.  
 Cadick; Balster v.  
 Caffo; Sambataro v.  
 Caffrey; Caffrey v.  
 Cahill; District of Columbia v.  
 Cake; Richmond v.  
 Calhoun; Palais Royal v.  
 Calhoun; Peak v.  
 California Co-op. Canneries; United States v.  
 Callahan; United States ex rel. Denney v.  
 Camden Iron Works; District of Columbia v.  
 Campbell; Biggs v.  
 Campbell; Commercial Credit Co. v.  
 Campbell; Emack v.  
 Campbell; Oregon R. & N. Co. v.  
 Campbell; Redman v.  
 Campbell; United States v.  
 Canfield; Mullen v.  
 Capital Trac. Co.; Carmody v.  
 Capital Trac. Co.; Fleming v.  
 Capital Trac. Co.; George v.  
 Capital Trac. Co.; Mangum v.  
 Capital Trac. Co.; Public Utilities Comm. v.  
 Capital Trac. Co.; Rockwell v.  
 Capital Trac. Co.; United States v.  
 Cardillo; Associated General Contractors v.  
 Cardillo; Fazio v.  
 Cardillo; Maryland Casualty Co. v.  
 Cardillo; New Amsterdam Casualty Co. v.  
 Cardillo; Potomac Elec. Power Co. v.  
 Carey; Boardman v.  
 Carl; C. I. T. Corp. v.  
 Carpenter; Hauptman v.  
 Carroll; Goldwyn Distributing Corp. v.  
 Carter Hdw. Co.; Bond v.  
 Carusi; Gillem v.  
 Carusi; United States ex rel. Gillem v.  
 Caruthers; Roller v.  
 Carver; Watson v.  
 Case; Operative Plasterers and Cement Finishers International Assn. v.

Castle; Missouri Pac. R. Co. v.  
 Cella; United States v.  
 Central Cigar Co.; Higgins v.  
 Central Constr. Co.; Ohio Bank v.  
 Central Dispensary & Emergency Hosp.; White v.  
 Central Georgia R. Co.; Snead v.  
 Chamberlain; Keane v.  
 Chambers; Hazen v.  
 Charles H. Tompkins Co.; United States ex rel. Turnover v.  
 Charles Levine, Inc.; Snyder v.  
 Charles L. Heinle Specialty; United States v.  
 Chesapeake & Ohio Canal Co.; Mackall v.  
 Chesapeake & O. R. Co.; Howard v.  
 Chicago, M. & P. S. R. Co.; United States v.  
 Chicago, R. I. & P. R. Co.; Hall v.  
 Children's Hosp.; Atkins v.  
 Childress; Manning v.  
 Chipman; Sarfert Co. v.  
 Christman; Luchs v.  
 Church; Church v.  
 Cissel; Smith v.  
 Cissell; Cissell v.  
 City & S. R. Co.; Bernhardt v.  
 City & S. R. Co.; Chunn v.  
 City & Suburban Co.; United States ex rel. Newman v.  
 Clabaugh; Goldsmith v.  
 Clabaugh; Mulvihill v.  
 Clabaugh; United States ex rel. Mulvihill v.  
 Clack; Arnett v.  
 Clarendon Tp.; Young v.  
 Clark; Andreas v.  
 Clark; Dancy v.  
 Clarke; Roller v.  
 Clawans; District of Columbia v.  
 Clifford; Jackson v.  
 Coal & Coke R. Co.; Ferguson Contracting Co. v.  
 Coblens; Davis v.  
 Cogswell; Cogswell v.  
 Colbert; Speer v.  
 Colby; Washington Loan & Trust Co. v.  
 Cole; Cole v.  
 Coleman; France v.  
 Colpoys; Rapeer v.  
 Colpoys; Reed v.  
 Colts; District of Columbia v.  
 Columbia Graphophone Co., Randolph & Co. v.  
 Columbus; Flaherty v.  
 Commercial Credit Co.; Barrett v.  
 Commercial Nat. Bank; Howell v.  
 Com. Int. Rev.; Garden City Feeder Co. v.  
 Com. Int. Rev.; Gould v.



Com. Int. Rev.; Vanderbilt v.  
 Commissioners of District of Columbia; American Security & Trust Co. v.  
 Concord Club; Storow v.  
 Conger; Hayes v.  
 Conley; St. Louis, I. M. & S. R. Co. v.  
 Connecticut General Life Ins. Co.; White v.  
 Consumers Brew. Co.; Commercial Bank v.  
 Convention of Protestant Episcopal Church; Washington Loan & Trust Co. v.  
 Cook; Welch v.  
 Coomes; Fletcher v.  
 Cooper; Cooper v.  
 Cooper; Mann v.  
 Costello; Palmer v.  
 Cowgill; Washington Loan & Trust Co. v.  
 Crandol; United States v.  
 Crawford; Boosalis v.  
 Crawford Paving Co.; District of Columbia v.  
 Creamer; Rudolph v.  
 Creel; Creel v.  
 Cromelin; Universal Dealers Co. v.  
 Crook; Willard v.  
 Cropper; McLane v.  
 Crouse; Mackenzie v.  
 Crowley; Kresge v.  
 Culley; Berkeley v.  
 Cullinane; Reilly v.  
 Cumberland; Baltimore & P. R. Co. v.  
 Cumberland; Brennan Constr. Co. v.  
 Cummings; Consaul v.  
 Cummings; United States ex rel. Ordmann v.  
 Cunningham; Harper v.  
 Curtin; King v.  
 Curtis; Brice v.  
 Curtis; Bryan v.  
 Cushman; Reed v.  
 Custis; United States ex rel. Hammond v.  
 Custis; United States ex rel. Thomson v.  
 Cutting; Carter v.

## D

Daggett; Richardson v.  
 Dahlgren; Dahlgren v.  
 Daly; Zirkle v.  
 Daniels; Persing v.  
 Dann; Washington Gas Light Co. v.  
 Dante; Berry & Whitmore Co. v.  
 Dante; Brandenburg v.  
 Dante; Hutchins v.  
 Dante; Tait v.

Dante; Velati v.  
 Darling; Washington Loan & Trust Co. v.  
 D'Audigne; Langley v.  
 David; Kennedy v.  
 Davidson; Wight v.  
 Davis; Davis v.  
 Davis; Sincell v.  
 Davison; Richards v.  
 Dean; Von Rosen v.  
 Delafield & Baxter Cement Co.; Brown v.  
 Delaware; Pedersen v.  
 Deming; United States ex rel. Stowell v.  
 De Mitkiewicz; Wall v.  
 Denison; Lewis v.  
 Dennert; Lillie v.  
 Dennett; Dennett v.  
 Dent; Ferguson v.  
 Denver & R. G. R. Co.; Equitable Trust Co. v.  
 De Ruiz; De Ruiz v.  
 Dewalt; District of Columbia v.  
 Dickerson; Hoskins v.  
 Dieterich; Dieterich v.  
 Dimmick; Schooley v.  
 Direction Der Disconto Gesellschaft; Sprunt v.  
 Dismer; Chapman v.  
 District Court; Johnson v.  
 District Nat. Bank; McKee v.  
 District of Columbia; American Security & Trust Co. v.  
 District of Columbia; Bailey v.  
 District of Columbia; Baker v.  
 District of Columbia; Bell v.  
 District of Columbia; Bowles v.  
 District of Columbia; Brandenburg v.  
 District of Columbia; Capital Transit Co. v.  
 District of Columbia; Carranzo v.  
 District of Columbia; Cave v.  
 District of Columbia; Chesevoir v.  
 District of Columbia; Clawans v.  
 District of Columbia; Coleman v.  
 District of Columbia; Colts v.  
 District of Columbia; Columbia Brick Co. v.  
 District of Columbia; Crane v.  
 District of Columbia; Croson v.  
 District of Columbia; DePue v.  
 District of Columbia; D. J. Duni-gan, Inc. v.  
 District of Columbia; Eckloff v.  
 District of Columbia; Ferguson v.  
 District of Columbia; Fitzhugh v.  
 District of Columbia; Garrity v.  
 District of Columbia; Gassenheimer v.  
 District of Columbia; General Elec. Co. v.  
 District of Columbia; Golf, Inc. v.  
 District of Columbia; Gray v.

District of Columbia; Great A. & P. Tea Co. v.  
 District of Columbia; Hall v.  
 District of Columbia; Heald v.  
 District of Columbia; Horning v.  
 District of Columbia; Howerton v.  
 District of Columbia; Hunt v.  
 District of Columbia; Jefferson v.  
 District of Columbia; Jones v.  
 District of Columbia; King v.  
 District of Columbia; Klopfer v.  
 District of Columbia; Lake for Use of Peyser v.  
 District of Columbia; Lappin v.  
 District of Columbia; Leaman v.  
 District of Columbia; Leventhal v.  
 District of Columbia; Lewis v.  
 District of Columbia; Loube v.  
 District of Columbia; McGraw v.  
 District of Columbia; Metropolitan R. Co. v.  
 District of Columbia; Moore's Victoria Theatre Co. v.  
 District of Columbia; Nation v.  
 District of Columbia; Neild v.  
 District of Columbia; Nusbaum v.  
 District of Columbia; Oden v.  
 District of Columbia; Panitz v.  
 District of Columbia; Parker v.  
 District of Columbia; Parsons v.  
 District of Columbia; Reamy v.  
 District of Columbia; Rose v.  
 District of Columbia; Rynex v.  
 District of Columbia; Security Sav. & Commercial Bank v.  
 District of Columbia; Sehr v.  
 District of Columbia; Sherwood Bros., Inc. v.  
 District of Columbia; Simmons v.  
 District of Columbia; Sinclair v.  
 District of Columbia; Smallwood v.  
 District of Columbia; Sullivan v.  
 District of Columbia; Sweeney v.  
 District of Columbia; Talty v.  
 District of Columbia; Thomas v.  
 District of Columbia; Tipp v.  
 District of Columbia; Trometer v.  
 District of Columbia; Tubins v.  
 District of Columbia; Tumulty v.  
 District of Columbia; United States Casualty Co. v.  
 District of Columbia; United States ex rel. Connor v.  
 District of Columbia; United States ex rel. Russell v.  
 District of Columbia; Washington R. & Elec. Co. v.  
 District of Columbia; White v.  
 District of Columbia; Willis v.  
 District of Columbia; Woodbury v.  
 District of Columbia; Zinkhan v.  
 Dodge; Crosby v.  
 Dodge; Strasburger v.



Doheny; United States v.  
 Donovan; Herrell v.  
 Dorsey; Hill v.  
 Dougherty; O'Brien v.  
 Dougherty; Quinn v.  
 Dougherty; Wilkinson v.  
 Douglas; Holtzman v.  
 Downey; Washington A. & Mt.  
 V. R. Co. v.  
 Downs; Downs v.  
 Doyle; Notes v.  
 Doyle; Smith v.  
 Doyle; United States ex rel. Cor-  
 bin v.  
 Doyle; United States ex rel. Crom-  
 well v.  
 Drake; American Home Life Ins.  
 Co. v.  
 Drew; Stern v.  
 Drummond; Michigan Tool Co. v.  
 Drury; Daniel v.  
 Drury; H. L. Rust Co. v.  
 Drury; Taylor v.  
 Dudley; Massachusetts Mut. Acc.  
 Assn. v.  
 Duehay; McCoy v.  
 Dulany; Berl v.  
 Dulany; Wagaman v.  
 Duncan; Bliss v.  
 Duncanson; Manson v.  
 Duncan Townsite Co.; Lane v.  
 Dunn; Washington Gas Light  
 Co. v.  
 Dunnington; Dunnington v.  
 Du Pont Nat. Bank; Chase v.  
 Dutch Baker Boy, Inc., Han-  
 back v.  
 Duvall; Claudy v.  
 Duvall; Robinson v.

## E

Early; Early v.  
 Easterhazy; Brown v.  
 Eastern Trust & Banking Co.;  
 American Ice Co. v.  
 Eastern Trust & Banking Co.;  
 Willis v.  
 Eberly; Cahill v.  
 Edes; Karrick v.  
 Edwards; Aderhold v.  
 Edwards; Jerman v.  
 E. F. Brooks Co.; Davidson v.  
 Eisinger Mill & Lbr. Co.; Roth v.  
 Eisminger; American Sav. Bank v.  
 Elbert; Green v.  
 Elgen; United States ex rel. Ar-  
 lington & F. Auto R. Co. v.  
 Eliason; United States v.  
 Elliot; Forster v.  
 Elite Laundry Co.; National  
 Cafes v.  
 Elkins; Carroll v.  
 Elkins; Elkins v.  
 Ellis; Ellis v.  
 E. L. Murphy Co.; Eisinger v.

Elroy; McGowan v.  
 Elverson; Macfarland v.  
 Elwood; Mustard v.  
 Embrey; Harris v.  
 Emergency Hosp.; Leitch v.  
 Emery; Emery v.  
 Emig; Mitchell Min. Co. v.  
 Emmons; Jackson v.  
 Empire State Realty Co.; Crois-  
 sant v.  
 Equitable Life Assur. Soc.; Ka-  
 vakos v.  
 Esher; Devlin v.  
 Etchison; Rosslyn Steel & Cement  
 Co. v.  
 Evans; Evans v.  
 Evans; United States v.  
 Evening Star; Huysman v.  
 Evening Star Newspaper Co.;  
 Balinovic v.  
 Eyster; Cropley v.

## F

Fair; United States v.  
 Faircloth; United States ex rel.  
 W. A. Pierce Co. v.  
 Fall; United States v.  
 Farrow; Eclipse Bicycle Co. v.  
 Fawcett; Fidelity Sav. Co. v.  
 Fechheimer; Bieber v.  
 Fedarwisch; Alsop v.  
 Fendall; Turner v.  
 F. G. Smith Piano Co.; Minton v.  
 F. H. Duehay, Inc.; Hoffman v.  
 Fickling; Ross v.  
 Fidelity & Deposit Co.; Davis v.  
 Fidelity & Deposit Co.; District of  
 Columbia ex rel. Langellotti v.  
 Fidelity & Deposit Co.; Morgan-  
 thau v.  
 Field; Billings v.  
 Fifth Baptist Church; Baltimore  
 & P. R. Co. v.  
 Filippone; Hayden v.  
 Finance Corp.; Jackson v.  
 First Nat. Bank; Morsell v.  
 Fishbien; Barbagollo v.  
 Fisher; Bradley v.  
 Fisher; United States ex rel. Mc-  
 Kenzie v.  
 Fiske; Washington Nat. Bldg. &  
 Loan Assn. v.  
 Fitch; Graham v.  
 Fitzpatrick; United States v.  
 Fletcher; McCartney v.  
 Flook; Armour v.  
 Flynn; Mutual Benefit Life Ins.  
 Co. v.  
 Follansbee; Follansbee v.  
 Forbes; United States ex rel. Nor-  
 ris v.  
 Ford; Ford v.  
 Ford; Lyon v.  
 Forsberg; Lefler v.  
 Foster; Morris v.

Fox; Atlas Portland Cement  
 Co. v.  
 Fox; Brosnan v.  
 Fox; Edwards v.  
 Fox; First Nat. Bank. v.  
 Francis; Norwood v.  
 Franklin; Chalaire v.  
 Franklin Nat. Bank; Thomp-  
 son v.  
 Fraser; Henry v.  
 Fraser; Tepper v.  
 Frazer; District of Columbia v.  
 Fred; District of Columbia v.  
 Frederick; Werner v.  
 Freedman's Sav. & Trust Co.;  
 Dodge v.  
 Freed-Wisemann Radio Corp.;  
 Carroll Elec. Co. v.  
 French; Young Women's Chris-  
 tian Association v.  
 Frey; Frey v.  
 Friday; Santa Fe Cent. R. Co. v.  
 Friedenwald; Friedenwald v.  
 Friedman; Singer v.  
 Frigidaire Sales Corp.; Marks v.  
 Frye; Mallery v.  
 Fuller; McMillan v.

## G

Galliher; Dougherty v.  
 Galliher; Harper v.  
 Gannon; Manning v.  
 Gans; Bieber v.  
 Gant; District of Columbia v.  
 Gardner; District of Columbia v.  
 Garner; Wielar v.  
 Garrett; Garrett v.  
 Garrison; District of Columbia v.  
 Geare; United States v.  
 Geiger; Spilman v.  
 General Motors Acceptance  
 Corp.; International Finance  
 Corp. v.  
 Georgetown & T. R. Co.; District  
 of Columbia v.  
 Georgetown Gas Light Co.; Dis-  
 trict of Columbia v.  
 George Washington University;  
 Hornblower v.  
 Gerstley; McGuire v.  
 Gibson; Gibson v.  
 Gibson; Riddle v.  
 Giles; Knott v.  
 Gillet & Co.; Pierce v.  
 Gilmore; Smith v.  
 Gish; Walker v.  
 Glekas; Diamantopoulos v.  
 Glennan; Glennan v.  
 Glover; Patten v.  
 Glueck; Whipp v.  
 Goldman; Sullivan v.  
 Goldsoll; Foster v.  
 Goldstein; Saunders v.  
 Golway; Baltimore & P. R. Co. v.  
 Gompers; Brumbaugh v.



Gongwer; United States ex rel.  
Todd v.  
Gordon; Green v.  
Gordon; Overby v.  
Gordon; Stevens v.  
Gott; Mut. Life Ins. Co. v.  
Gottwals; Bugher v.  
Gotwals; Dorsey v.  
Gotwals; Smith v.  
Gould; Murphy v.  
Grand Fountain; Brown v.  
Grand Lodge K. of P.; Creswill v.  
Grant; Lincoln v.  
Gray; McNeil v.  
Gray; National Safe Deposit, Sav.  
& Trust Co. v.

Great Northern R. Co.; Kelley v.  
Greenwald; United States Ship-  
ping Bd. v.  
Griffith; United States v.  
Griffith-Consumers Co.; Chap-  
man v.  
Grimshaw; Hopkins v.  
Groff; Angell v.  
Groff; Groff v.  
Groome; United States v.  
Group Health Assn.; Jordan v.  
Groves; Brotherhood of Railroad  
Trainmen v.  
Guiffrida; Ginder v.  
Gutierrez; El Paso & N. E. R.  
Co. v.  
Gwynn; Fields v.

## H

Hackett; Chicago, I. & L. R.  
Co. v.  
Hagan; Boss v.  
Haliday; Haliday v.  
Hall; Barry v.  
Hall; Carver v.  
Hamilton; Dennis v.  
Hamilton; Hardebeck v.  
Hamilton Nat. Bank; City Bank v.  
Hamilton Realty Corp.; Lucas v.  
Hammond; Washington Loan &  
Trust Co. v.  
Hanlon; Tuohy v.  
Hardee; Boss v.  
Hardee; Hannan v.  
Hardee; Hazen v.  
Hardy; Lehmer v.  
Harlan; Bell v.  
Harlowe; Totten v.  
Harmer; Clark v.  
Harper; Berkley v.  
Harr; McCaul Co. v.  
Harrah; Dunning v.  
Harrington; King v.  
Harris; Baltimore & O. R. Co. v.  
Harris; Harris v.  
Harris; Phoenix Mut. Life Ins.  
Co. v.  
Harrison; Moran v.  
Harrison; Steele v.

Harrison Granite Co.; Guilford  
Granite Co. v.  
Harriss; Haviland v.  
Harry Kaufman; New Negro Alli-  
ance v.  
Hartford Acc. & Indem. Co.; Car-  
dillo v.  
Hartford Acc. & Indem. Co.;  
Hoage v.  
Hawk; Goodloe v.  
Hawkins; Metropolitan Life Ins.  
Co. v.  
Hawkins; Southern R. Co. v.  
Hawley; Hawley v.  
Hawley; Hazen v.  
Hawley; United States ex rel. Mc-  
Duffie v.  
Hayes; Moses v.  
Hazen; Blanks v.  
Hazen; Cafritz v.  
Hazen; Capital Transit Co. v.  
Hazen; Cogger v.  
Hazen; Hutchins Mut. Ins. Co. v.  
Hazen; Johnson v.  
Hazen; Nealy v.  
Hazen; Potomac Elec. Power Co. v.  
Hazen; Ralph v.  
Hazen; Walker v.  
Hazen; Willner v.  
Hazen-Latimer Co.; Winter v.  
Hechinger; Reichelderfer v.  
Hedges; Parish v.  
Heiberger; National Safe De-  
posit, Sav. & Trust Co. v.  
Heiskell; Adriance, Platt & Co. v.  
Helvestine; Helvestine v.  
Helwig; Case v.  
Hengesbach; Hengesbach v.  
Henkel; Benson v.  
Hennick; Stoutenburgh v.  
Henning; Hornor v.  
Henning; Turner v.  
Henry; Dingman v.  
Herbert; Johns v.  
Herdman; Breneman v.  
Herrell; Herrell v.  
Herrell; Manogue v.  
Herrell; Scott v.  
Herrell; Smith v.  
Herring-Hall-Marvin Safe Co.;  
Halls Safe Co. v.  
Herzog; Wise v.  
Hesse; Young v.  
Heurich; Peck v.  
Heyl; Smoot v.  
Hibbs; National Safe Deposit Sav.  
& Trust Co. v.  
Hickey; Barbour v.  
Higgin Mfg. Co.; Green v.  
Higgins; Macafee v.  
Hill; Bracey v.  
Hill; Halback v.  
Hill; Talbott v.  
Hill; United States ex. rel.  
Bracey v.

Hillman; Robinson v.  
Hillman; Wilkins & Co. v.  
Hinden; Stokes v.  
Hines; Hart v.  
Hirsch Lbr. Co.; United States  
Shipping Board Merchant Fleet  
Corp. v.  
Hitchcock; Degge v.  
Hitchcock; Hitchcock v.  
Hitt; Whitaker v.  
Hoage; Aetna Life Ins. Co. v.  
Hoage; Anderson v.  
Hoage; Ayers v.  
Hoage; Capital Transit Co. v.  
Hoage; Chapman v.  
Hoage; Commercial Casualty Ins.  
Co. v.  
Hoage; Employers Liability Assur.  
Corp. v.  
Hoage; Fulton v.  
Hoage; Georgia Casualty Co. v.  
Hoage; Harris v.  
Hoage; Hartford Acc. & Indem.  
Co. v.  
Hoage; Liberty Mut. Ins. Co. v.  
Hoage; London Guarantee & Acc.  
Co. v.  
Hoage; Lumbermen's Mut. Cas-  
ualty Co. v.  
Hoage; Malone v.  
Hoage; Massachusetts Bonding &  
Ins. Co. v.  
Hoage; Metropolitan Casualty  
Ins. Co. v.  
Hoage; Monahan v.  
Hoage; Morgan v.  
Hoage; National Casualty v.  
Hoage; New Amsterdam Casualty  
Co. v.  
Hoage; Powell v.  
Hoage; Proctor v.  
Hoage; Scott v.  
Hoage; Shugard v.  
Hoage; Speaks v.  
Hoage; United States Casualty  
Co. v.  
Hoage; Washington Terminal  
Co. v.  
Hoage; Whitfield v.  
Hoage; Young v.  
Hodges; Nicholls v.  
Hof; Capital Traction Co. v.  
Hoffman; Washington Market  
Co. v.  
Holcer; Dick Murphy, Inc. v.  
Holland American Line; Win-  
dell v.  
Holliday; Chicago, R. I. & P. R. v.  
Holmquist; McCartney v.  
Holt; Holt v.  
Holt; Throckmorton v.  
Holtman; McCarthy v.  
Hoover; Kosters v.  
Hough; Lipscomb v.  
Houston; Huyler's v.



Howard; Bradbury v.  
 Howard; Howard v.  
 Howard; Morgan v.  
 Howenstein; Bowen v.  
 Howland; MacKie v.  
 Hutchins; V. G. Fisher Art Co. v.  
 Huddleston; Saks v.  
 Hudson; Aderhold v.  
 Huff; Hammerer v.  
 Hufty; Lynham v.  
 Hughes; Lisner v.  
 Humphrey; Lindberg v.  
 Humphrey; Lippard v.  
 Humphreys; Evans v.  
 Humphries; District of Columbia v.  
 Hunt; Rudolph v.  
 Hurley; Fidelity & Deposit Co. v.  
 Hurley; United States ex rel. Greathouse v.  
 Hutchins; Dante v.  
 Hutchins; Hutchins v.  
 Hutchins; Miniggio v.  
 Hutchinson; Desio v.  
 Hutton; District of Columbia v.

## I

Iglehart; Iglehart v.  
 Ihrie; Reichelderfer v.  
 Illinois Cent. R. Co.; Howard v.  
 Indemnity Ins. Co.; Voehl v.  
 Ingram; United States ex rel. Kreh v.  
 International Bank; Roberts v.  
 International Banking Corp.; Hayden v.  
 Iowa State Traveling Men's Assn.; Sasnett v.  
 International Trust Co.; Crook v.  
 Interstate Commerce Comm.; Baltimore & O. R. Co. v.  
 Irvin; Joerns v.

## J

Jackson; Carson v.  
 Jackson; Smith v.  
 Jacobi; Jacobi v.  
 Janes; Janes v.  
 Jaques; Fidelity Storage Co. v.  
 Jaselli; Simmons v.  
 Jawish; International Finance Corp. v.  
 Jenks; Hitz v.  
 Jenny Wren Co.; Sykes v.  
 Jerman; Forrester v.  
 Jerome; Maghan v.  
 Johnson; Branham v.  
 Johnson; Fox v.  
 Johnson; United States v.  
 Johnston; Chiswell v.  
 Johnston; Cisseil v.  
 Johnston; Johnston v.  
 Johnston; McDonald v.  
 Johnston; Stewart v.

Jones; Allen v.  
 Jones; Jones v.  
 Jones; Wills v.  
 Jordan; Briel v.  
 Jordan; Landram v.  
 Julius Lansburgh Furn. & Carpet Co.; Weinstein v.  
 Junghans; Junghans v.

## K

Kahl-Holt Co.; Gill v.  
 Kalinoglu; Lely v.  
 Kalmbach; Doherty v.  
 Karr; New York Continental Filtration Co. v.  
 Karrick; Chamberlain Metal Weather Strip Co. v.  
 Kauffman; Todd v.  
 Kay; Merritt v.  
 Keesee; Atlantic Greyhound Lines, Inc. v.  
 Keller; Feucht v.  
 Kellogg; Fletcher v.  
 Kelly; Continental Casualty Co. v.  
 Kelly; Metzger v.  
 Kemp; Ballou v.  
 Kenaday; Sinnott v.  
 Kendall; District of Columbia v.  
 Kenyon; Marsh v.  
 Key; Chesapeake & Ohio Canal Co. v.  
 Kidwell; Zerbst v.  
 King; Capital Trac. Co. v.  
 King; Jones v.  
 King; Palmer v.  
 King; Washington v.  
 Kingsbury; Fidelity Storage Co. v.  
 Kinyoun; Sachs v.  
 Kite; Fishel v.  
 Klecka; MacAboy v.  
 Klein; Anacostia & P. R. R. Co. v.  
 Klein; United States Fidelity & Guar. Co. v.  
 Klesner; Federal Trade Comm. v.  
 Kloeb; Armour & Co. v.  
 Knabe Mfg. Co.; Baum v.  
 Knickerbocker Theatre Co.; Lyman v.  
 Knox; Rudolph v.  
 Koehler; Fowler v.  
 Koehne; Columbia Cat Fanciers v.  
 Koester; Weaver v.  
 Koppel Industrial Car Equipment Co.; Orenstein & Koppel, Aktiengesellschaft v.  
 Kountakis; Chaparas v.  
 Kraak; Marshall v.  
 Kraft; Morgan v.  
 Krause; Columbia v.  
 Kreisch; Sutherland v.  
 Krous; Krous v.  
 Kurtz; Hogan v.  
 Kutz; Hollis v.  
 Kutz; Terminal Taxicab Co. v.

## L

Laks; Fowler v.  
 Lamson; O'Toole v.  
 Landon; Karrick v.  
 Landram; Jordon v.  
 Lane; Ewald v.  
 Lane; Handel v.  
 Lane; Hogleund v.  
 Lane; Marshall v.  
 Lane; United States ex rel. Arant v.  
 Lane; United States ex rel. Bowlegs v.  
 Lane; United States ex rel. Coal Co. v.  
 Lane; United States ex rel. McDonald v.  
 Lane; United States ex rel. Reynolds v.  
 Lang; Harris v.  
 Lange; Royal Glue Co. v.  
 Langley; Hutchins v.  
 Lansburgh; Silver v.  
 Larner; Survivors of Seventh Georgia Regiment v.  
 L. C. Smith Bros. Typewriter Co.; Minnix Co. v.  
 Lear; Prudential Ins. Co. v.  
 Lee; Aderhold v.  
 Lee; Lee v.  
 Lee; Selden v.  
 Lee D. Butler, Inc.; Anderson v.  
 Leesnitzer; Taylor v.  
 Le Fevre; Beyer v.  
 Lenoir; Lenoir v.  
 Lenovitz; Palmer v.  
 Leonhardt; Harris v.  
 Lesh; Lesh v.  
 Levine; Doleman v.  
 Libbey; Mathews v.  
 Liberty Mut. Ins. Co.; Cardillo v.  
 Liberty Mut. Ins. Co.; Hoage v.  
 Lichtler; Dexter v.  
 Lightbown; Breuninger v.  
 Lilly; McNeill v.  
 Lincoln Inv. Corp.; Glennan v.  
 Lipscomb; Western Union Tel. Co. v.  
 Litho-Marble Decorating Co.; Albaugh v.  
 Littleton; Moss v.  
 Lockwood; District of Columbia v.  
 Lockwood; Moses v.  
 Lockwood; Rudolph v.  
 Lockwood Dental Co.; Suter v.  
 Loeb; Sonnemann v.  
 Lohnes; Webb v.  
 Lorenz; Woolen v.  
 Loughran; Loughran v.  
 Louisville & N. R. Co.; Hall v.  
 Luckett; Lewis v.  
 Lusby; Capital Trac. Co. v.  
 Lynch; Crandall v.  
 Lynch; McManus v.



Lynch; Neubeck v.  
 Lynch; Welch v.  
 Lynchburg Inv. Corp.; Newman v.  
 Lynham; District of Columbia v.  
 Lyon; Bursey v.  
 Lyon; Walker v.

## M

Mace; United States v.  
 Macfadden Publications; Whitaker v.  
 Macfarland; Brown v.  
 Macfarland; Fay v.  
 Macfarland; Seufferle v.  
 Macfarland, United States ex rel. Daly v.  
 Mackey; Washington Asphalt Block & Tile Co. v.  
 Mackubin; Matson v.  
 Maddox; Wills v.  
 Maddux; Street v.  
 Madison; Marbury v.  
 Magruder; Barker v.  
 Maine Red Granite Co.; Flannery v.  
 Mallan; Condon v.  
 Maloney; United States v.  
 Mangan; Kennedy v.  
 Manhattan Life Ins. Co.; Kaplan v.  
 Mann; Green v.  
 Mann; Henderson v.  
 Manning; Chesapeake & Potomac Tel. Co. v.  
 Manning; Gannon v.  
 Mannix; Simpson v.  
 Manson; Duncanson v.  
 Marchalk; Marschalk  
 Marcum; Marcum v.  
 Maroney; Healey v.  
 Marr; Prudent Patricians of Pompeii v.  
 Martin; Lemon v.  
 Martin; Martin v.  
 Maryland; Macalester v.  
 Maschaur; Maschaur v.  
 Mason; Samaha v.  
 Mason; Smith v.  
 Masson; Howison v.  
 Masters; Hartman v.  
 Masters; Mollohan v.  
 Mathewson; Clark v.  
 Mathues; United States ex rel. Smith v.  
 Matteson; Holden v.  
 Matthews; Bradford v.  
 Matthews; Hevner v.  
 Mattingly; Cleveland v.  
 Maxwell; McDonald v.  
 Mayer; Wiggins v.  
 Mayhew; Myers v.  
 McAdoo; LeCrone v.  
 McAdoo; Ryan v.  
 McBlair; Collins v.  
 McBlair; Wheeler v.

McCallum-Sauber Co.; James E. Colliflower & Co. v.  
 McCandish; Commercial Nat. Bank v.  
 McCarl; United States ex rel. Skinner & Eddy Corp. v.  
 McCarthy; United States ex rel. Vause v.  
 McClinton, National Bondholders Corp. v.  
 McConnell; Cox. v.  
 McCormick; Crenshaw v.  
 McCoy; Hight v.  
 McCurdy; Marfield v.  
 McDermott; Simpkins v.  
 McDonald; Mann v.  
 McGinnis; Southern Pac. Co. v.  
 McGowan; Parish v.  
 McGrath; Miles v.  
 McGreal; Utermehle v.  
 McGrew; McGrew v.  
 McHugh; Alaska S. S. Co. v.  
 McIntire; Green v.  
 McIntire; McIntire v.  
 McKibben; Philadelphia & Reading R. Co. v.  
 McKimmie; Wilkinson v.  
 McKittrick; McKittrick v.  
 McLane; Cropper v.  
 McLarren; McLarren v.  
 McLaughlin; West v.  
 McMillan; United States v.  
 McNeal; Ostrow v.  
 McReynolds; Commercial Credit Co. v.  
 Meacham & Babcock Shipbldg. Co.; Zibell v.  
 Mealy; Naylor v.  
 Mearns; Tuckerman v.  
 Medical Supervisors; Kemp v.  
 Mellon; Doerschuck v.  
 Melovich; Landvoight v.  
 Menna; Menna v.  
 Merchants & Miners Transp. Co.; Butts v.  
 Mertz; Mellon v.  
 Metropolitan Club; United States Elec. Lighting Co. v.  
 Metropolitan Life Ins. Co.; Griffin v.  
 Metropolitan R. Co.; District of Columbia v.  
 Metz; Turner v.  
 Metzger; Metzger v.  
 Michael Del Balso, Inc.; Rogge v.  
 Michalowicz; Michalowicz v.  
 Michaux; Ancient Egyptian Arabic Order v.  
 Michigan Gypsum Co.; H. G. Christman Co. v.  
 Middle States Loan Bldg. & Constr. Co.; Lawrence v.  
 Middleton; Curriden v.  
 Miller; Gotwals v.  
 Miller; Groff v.

Miller; Mades v.  
 Miller; Toledo Computing Scales Co. v.  
 Miller; Vincennes Steel Corp. v.  
 Millers Nat. Federation; Federal Trade Comm. v.  
 Mills; United States v.  
 Miniggio; Dante v.  
 Minnix; Simpson v.  
 Mitcham; Lee v.  
 Mitchell; Federal Intermediate Credit Bank v.  
 Mockabee; Cardillo v.  
 Moderns Restaurant; Russell v.  
 Moebis; Crosby v.  
 Moncure; Moncure v.  
 Montague Mfg. Co.; Jett v.  
 Montgomery County Nat. Bank; Darby v.  
 Moody; McGowan v.  
 Moor; Group Health Assn. v.  
 Moore; Barbour v.  
 Moore; Keely v.  
 Moore; Kelly v.  
 Moore; Loving v.  
 Moore; Metropolitan R. Co. v.  
 Moore; Moore v.  
 Moore; Mutual Comm. & Stock Co. v.  
 Moran; Capitol Dress Mfg. Co. v.  
 Moran; Harper v.  
 Moran; Moran v.  
 Morehouse; Bullock v.  
 Moreland; United States v.  
 Morgan; Baltimore & O. R. Co. v.  
 Morgan; Barksdale v.  
 Morgan; Morgan v.  
 Morgan; Myers v.  
 Morgenthau; American-Mexican Claims Bureau, Inc. v.  
 Morgenthau; United States Sav. Bank v.  
 Morley Construction Co.; United States ex rel. Johnson v.  
 Morris; National Exp. Co. v.  
 Morris; Rhees v.  
 Morrison; Byrne v.  
 Morrison; Robinson v.  
 Morrison; Simmons v.  
 Morse; Dulany v.  
 Morse; United States ex rel. Hine v.  
 Mortgage Security Corp.; Matatico v.  
 Moses; Aetna Life Ins. Co. v.  
 Moshewvel; Rudolph v.  
 Mount Vernon Sav. Bank; Bowen v.  
 Mt. Vernon Seminary; District of Columbia v.  
 Mowatt; Mullowny v.  
 Moyer; District of Columbia v.  
 Moyer; Harrison v.  
 Moyer; Price v.  
 Mozie; Heiskell v.



Mullowny; Hartranft v.  
Munn; Hutchins v.  
Munsey Trust Co.; Fischer v.  
Munsey Trust Co. Young v.  
Munson S. S. Line; Chase Bag Co. v.  
Murch Bros. Constr. Co.; Hoage v.  
Murdock; Durant v.  
Murphy; Frizell v.  
Murphy; Schwartz v.  
Murphy; Thomas v.  
Murphy; United States ex rel. Boucher v.  
Myer; United States ex rel. Moser v.  
Myers; Myers v.  
Myers; Soper v.

## N

Nash; District of Columbia v.  
Nash; Rowlett v.  
National City Bank; Hieston v.  
National Cotton Impr. Co.; Doremus v.  
National Met. Bank; Central Nat. Bank v.  
National Metropolitan Bank; Hitz v.  
National Mtg. & Inv. Co.; Quinn v.  
National Rifle Assn.; Hazen v.  
National Safe Deposit, Sav. & Trust Co.; Sterrett v.  
National Sav. & Trust Co.; Dahlgren v.  
National Sav. Trust Co.; McCurley v.  
National Sav. & Trust Co.; Orlove v.  
National Sav. Bank v. Huntington National Woodworking Co.; McReynolds v.  
Negley; Phillips v.  
Nelson; Nelson v.  
Neumann; Evans v.  
New Amsterdam Cas. Co.; Mays v.  
Newburgh; Wilson v.  
Newman; District of Columbia v.  
Newman; United States ex rel. Crupper v.  
Newton; Johnson v.  
New York ex rel. Tipaldo; Morehead v.  
New York Life Ins. & Trust Co.; Conkling v.  
Nicholls; Swenk v.  
Nicholson; Young v.  
Nickoloff; Johnson v.  
Nixon; Harris v.  
Nixon; Nixon v.  
Nolan; McLean v.  
Norman; Groo v.

Normandy; American Elementary Elec. Co. v.  
Norment; Utermehle v.  
Norris Peters Co.; Young  
North American Cement Corp.; Continental Casualty Co. v.  
Northcutt; Dugan v.  
Northern Pac. R. Co.; Malloy v.  
Northern Pac. R. Co.; Plummer v.  
Northern Pac. R. Co.; Winfree v.  
Norton; Ocumpaugh v.  
Nuckols; Nuckols v.

## O

Ober; Nash v.  
O'Brien; Chappell v.  
O'Brien; Jordan v.  
O'Connor; Dunn v.  
O'Connor; Smith v.  
O'Donoghue; Brownlow v.  
O'Donoghue; Metzger v.  
O'Donoghue; Sheehy v.  
Offutt; Hamilton v.  
Ogilby; Thomas v.  
O'Hearne; Rives v.  
Ohio & M. R. Co.; Wiggins Ferry Co. v.  
Okely; Bank of Columbia v.  
Olcott; Cooper v.  
Olmsted; Eastern Bldg. & Loan Assn. v.  
Olverson; Olverson v.  
O'Neal; Tribby v.  
O'Neil; O'Neil v.  
Oregon R. & Nav. Co.; Zikos v.  
Ormes; Houston v.  
Otis; United States ex rel. Estabrook v.  
O'Toole; Spruill v.  
Owen; Cruik v.  
Owens; New Arcade Co. v.  
Oyster; Nalle v.

## P

Paanakker; Barnes v.  
Pacific S. S. Co.; Sandstrom v.  
Pagenstecher; Trans-Atlantic Trust Co. v.  
Paige Hotel Co.; Barbour v.  
Paine; Grafton v.  
Paine; Williams v.  
Palmer; Costello v.  
Palmer; DePolly v.  
Palmer; Farr v.  
Palmer; Hayes v.  
Palmer; Wheeler v.  
Paregol; Hines v.  
Paris; Murphy v.  
Parish; Dutton v.  
Parke; Middleton v.  
Parker; Noyes v.  
Parks; Parks v.  
Park Sav. Bank; Thompson v.  
Parrella; Parrella v.  
Parrish; West Coast Hotel Co. v.

Parry; Carroll v.  
Patch; Otterback v.  
Patten; Glover v.  
Patterson; Bean v.  
Paul; Kane v.  
Payne; Chicago Business College v.  
Payne; Miller v.  
Peak; Dodd v.  
Peak; Dorsey v.  
Peak; Green v.  
Peak; Pitts v.  
Pedersen; Pedersen v.  
Penicks; Richardson v.  
Pennsylvania Iron Works Co.; Finney v.  
Penny; District-Florida Corp v.  
Peoples Bank; International Finance Corp. v.  
Peoples Rapid Transit Co.; Kinchlow v.  
Pepper; Shepherd v.  
Perin; Perin v.  
Perkins; Bata Shoe Co. v.  
Perrine; Slack v.  
Person; Okie v.  
Peters; Mackey v.  
Peters; Peters v.  
Peters; Rudolph v.  
Petersen; Brown v.  
Petrie; Wardman-Justice Motors v.  
Petty; Bardwell v.  
Petty; District of Columbia v.  
Pew; Freeman v.  
Philadelphia Inquirer Co.; Neely v.  
Phillips; Dreslin v.  
Pifer; Washington Nat. Bldg. & Loan Assn. v.  
Pitts; Wright v.  
Pitzer; Counselman v.  
Plisco; United States v.  
Plymouth Rock Squab Co.; Kinney v.  
Pneumatic Scale Corp.; Automatic Weighing Mach. Co. v.  
Poates; National Surety Co. v.  
Pond; Corbett v.  
Poole; Martin v.  
Porter; Campbell v.  
Porto Rico R. Light & Power Co.; Munoz v.  
Potomac Elec. Power Co.; Flynn v.  
Potomac Elec. Power Co.; Keller v.  
Potomac Elec. Power Co.; Lewis v.  
Potomac Elec. Power Co.; Rudolph v.  
Potts; Ecker v.  
Prall; Prall v.  
Presbrey; Thomas v.  
President and Directors of Georgetown College; Hughes v.  
Price; Chebithes v.  
Prospect Hill Cemetery; German Soc. v.



Provident Relief Assn.; Vernon v.  
 Prudential Ins. Co.; La Raw v.  
 Public Utilities Comm.; Potomac Elec. Power Co. v.  
 Public Utilities Comm.; Riegel v.  
 Pullo; International Exch. Bank v.  
 Pumphrey; United States v.  
 Purcell; Jenkins v.  
 Pywell; Moore v.

## Q

Quinn; Reichelderfer v.

## R

Railey; Bailey v.  
 Railway Terminal Warehouse Co.; Taliaferro v.  
 Randall; Kengla v.  
 Rapley; Fowler v.  
 Rapley; Friedlander v.  
 Rathbone; Hamilton v.  
 Rawlett; Nash v.  
 Rawlings; Campbell v.  
 Raymond; Hill v.  
 Read; Clark v.  
 Reading Co.; Continental Ins. Co. v.  
 Reed; Peak v.  
 Reed; Reed v.  
 Reeve; Perry v.  
 Reeves; Green v.  
 Reichelderfer; Branson v.  
 Reichelderfer; Concord Imp. Co. v.  
 Reichelderfer; Johnson v.  
 Reichelderfer; Mitchell v.  
 Reichelderfer; National Savings & Trust Co. v.  
 Reichelderfer; Shannon & Luchs Constr. Co. v.  
 Reid; Anderson v.  
 Reidy; Carroll v.  
 Reilly; Roberts v.  
 Reliable Stores Corp.; Fidelity Storage Co. v.  
 Reliable Stores Corp.; Smiths Transfer & Storage Co. v.  
 Rexine Co.; Bost v.  
 Reynolds; Bean v.  
 Rhodes; Rhodes v.  
 Richards; United States ex rel. Stevens v.  
 Richardson; Harriman v.  
 Richardson; Richardson v.  
 Richardson; Rose Campbell Mission v.  
 Richmond Park Imp. Co.; Hight v.  
 Rickman; Steever v.  
 Ridenour; Droop v.  
 Ridgeway; Ridgeway v.  
 Ridout; Crosby v.  
 Riggs; Hume v.  
 Riggs Nat. Bank; Colby v.

Riggs Nat. Bank; District of Columbia v.  
 Riggs Nat. Bank; George Washington University v.  
 Riggs Nat. Bank.; Jaselli v.  
 Ringgold; Levy Court v.  
 Ringgold; United States v.  
 Ritchie; Thaw v.  
 Rives; Anderson v.  
 Rives; Sims v.  
 Rives; Story v.  
 Roach; Booger v.  
 Robbins; Fontano v.  
 Roberts; Bradfield v.  
 Roberts; Millard v.  
 Robertson; United States ex rel. Baldwin v.  
 Robie; Rhodes v.  
 Robinson; District of Columbia v.  
 Robinson; Payne v.  
 Rockwell; Capital Trac. Co. v.  
 Rodgers; Cunningham v.  
 Rodman; Pothier v.  
 Rollings; Rollings v.  
 Roper; Spang v.  
 Roper; United States ex rel. Ashley v.  
 Rosenberg; Stern Co. v.  
 Ross; Bauman v.  
 Ross; Ramsey v.  
 Ross; United States v.  
 Ross; Whelpley v.  
 Roth; District of Columbia v.  
 Rothstein Dental Laboratories; Rowlette v.  
 Rowland; Craig v.  
 Royal Indem. Co.; Hoage v.  
 R. P. Andrews Paper Co.; District of Columbia v.  
 Rucker; Lockwood v.  
 Rudolph; Brown v.  
 Rudolph; Cave v.  
 Rudolph; Columbia Heights Realty Co. v.  
 Rudolph; Compton v.  
 Rudolph; Griffith v.  
 Rudolph; Johnson v.  
 Rudolph; Lynchburg Inv. Corp. v.  
 Rudolph; Potomac Elec. Power Co. v.  
 Rushenberger; Emack v.  
 Russell; Mazza v.  
 Rutherford; Jones v.  
 Ryan; Block v.  
 Ryan; National Sav. & Trust Co. v.  
 Ryan; Panama Ref. Co. v.

## S

Sabin; Reilly v.  
 Sacks; Daly v.  
 Sacks; Schwartz v.  
 St. Louis & S. F. R. Co.; Smeltzer v.

St. Louis & S. F. R. Co.; Spain v.  
 St. Louis, S. W. R. Co.; United States v.  
 Samaha; Morimura v.  
 Samaha; Samaha v.  
 Sampson; Washington Terminal Co. v.  
 Sanford; Beard v.  
 Sanford; Sanford v.  
 Saul; Saul v.  
 Savary; Carusi v.  
 Saville; Peoples Nat. Bank v.  
 Savings Bank; Brown v.  
 Sawyer; National Union v.  
 Schacklett; Columbia Nat. Bank v.  
 Schafer; Metropolitan Loan & Trust Co. v.  
 Schlaefer; Schlaefer v.  
 Schlosberg; Moran v.  
 Schneider; McAleer v.  
 Schoenfeld; Schrot v.  
 Schram; Strasburger v.  
 Schrider; Faulks v.  
 Schubert; Philadelphia, B. & W. R. Co. v.  
 Schurz; United States ex rel. McBride v.  
 Schwartz; Coleman v.  
 Scott; Bailey v.  
 Seaboard A. L. R. Co.; Cancellmo v.  
 Seaboard A. L. R. Co.; Knobel v.  
 Sears; Sears v.  
 Securities Corp. General; United States v.  
 Security Sav. & Commercial Bank; Fidelity Sav. Co. v.  
 Security Sav. & Commercial Bank; Ryan v.  
 Seeley; Seeley v.  
 Seitz; Seitz v.  
 Sellers; Brown v.  
 Settle; Settle v.  
 Seymoure; Mellon v.  
 Shamwell; Shipley v.  
 Shannon & Luchs Constr. Co., Commissioners of District of Columbia v.  
 Shapiro; Smith v.  
 Sharp; Webb v.  
 Shaw-Walker Co.; National Ben. Life Ins. Co. v.  
 Shedd; Riggs Fire Ins. Co. v.  
 Sheehy; Minar v.  
 Sheetz; Claws v.  
 Shehee; Resler v.  
 Shellman; Shellman v.  
 Shepherd; Fidelity & Deposit Co. v.  
 Shields; Shields v.  
 Shillington; Hamilton v.  
 Shine; Hyde v.  
 Shoemaker; Moore v.  
 Shreve; Hockman v.



Shulmier; Goodacre v.  
 Siddons; Kalbfus v.  
 Simmons; Johnson v.  
 Simmons; Simmons v.  
 Simms; United States v.  
 Simon; Simon v.  
 Simon; United States ex rel. Anderson v.  
 Simpson; District of Columbia v.  
 Sing Tuck; United States v.  
 Sixty-eight Cases of Syrup; United States v.  
 Slater; Brown v.  
 Slaybaugh; Griffith v.  
 Slocum; Brown v.  
 Small; Pearson v.  
 Smalley; Holley v.  
 Smith; Beyer v.  
 Smith; Columbian Fraternal Assn. v.  
 Smith; District of Columbia v.  
 Smith; Jackson v.  
 Smith; Patrick v.  
 Smith; Thompson v.  
 Smith; West v.  
 Smoot; London & Lancashire Indem. Co. v.  
 Snow; Snow v.  
 Snyder; Jackson v.  
 Snyder; Moore v.  
 Snyder; Notes v.  
 Soileau; Aderhold v.  
 Sothoron; Glenn v.  
 Southern Pac. Co.; Brooks v.  
 Southern R. Co.; Hyde v.  
 Southern R. Co.; Taylor v.  
 Southern R. Co.; United States v.  
 Southern Realty Corp.; Tryson v.  
 Southern Soda Fountain Co.; R. P. Andrews Co. v.  
 Sparks; Sparks v.  
 Speare; Cook v.  
 Splain; Ellison v.  
 Splain; Goodale v.  
 Splain; Hard v.  
 Splain; John v.  
 Splain; Lamar v.  
 Splain; Levy v.  
 Splain; Shore v.  
 Splain; Stallings v.  
 Splain; Watts v.  
 Splain; Webster v.  
 Staffan; Zeust v.  
 Stafford; Parli v.  
 Standard Oil Co.; Public Motor Service v.  
 Standard Steel Car Co.; Tri-State Motor Corp. v.  
 Stapleton; Anglo-Colombian Dev. Co. v.  
 State Council; National Council Junior Order United American Mechanics v.  
 Staub; Staub v.  
 Stewart; Griffith v.

Stewart; Stewart v.  
 Stickel; Stickel v.  
 Stone; Georgetown College v.  
 Stone; Standard Sav. Bank v.  
 Storey; Storey v.  
 Strauss; Rector v.  
 Street; Richards v.  
 Stubblefield; Street v.  
 Stubblefield; Wirt v.  
 Sturgeon; Miller-Shoemaker Co. v.  
 Sullivan; Banville v.  
 Sullivan; Mearns v.  
 Sullivan; Settlemier v.  
 Sullivan; United States Elec. Lighting Co. v.  
 Sun Indemnity Co.; Bruckner-Mitchell v.  
 Sun Printing & Pub. Co.; Ricketts v.  
 Superintendent of Washington Asylum & Jail; Prioleau v.  
 Susquehanna Coal Co.; Washington Loan & Trust Co. v.  
 Sutherland; Pilger v.  
 Sweeney; National Safe Deposit, Sav. & Trust Co. v.  
 Symons; Eichelberger v.  
 Symons; Symons v.

## T

Taliaferro; United States v.  
 Talty; Talty v.  
 Tanner; Thompson v.  
 Tanner; Towles v.  
 Taylor; Baltimore & P. R. Co. v.  
 Taylor; Columbia University v.  
 Taylor; Davis v.  
 Taylor; Dawson v.  
 Taylor; Slater v.  
 Taylor; Southern R. Co. v.  
 Taylor; Taylor v.  
 Taylor; Tenney v.  
 Taylor; Waters v.  
 Tendler; Tendler v.  
 Tennessee Valley Authority; Posey v.  
 Terminal Refrigerating & Warehousing Co.; Hoage v.  
 Terminal Taxicab Co.; Calvert v.  
 Terranova; United States v.  
 Thirty-Six Bottles of London Dry Gin; United States v.  
 Thomas; Baltimore & O. R. Co. v.  
 Thomas; Dobbins v.  
 Thomas; Edward Thompson Co. v.  
 Thomas; Johnson v.  
 Thomas; Presbrey v.  
 Thomas; Wheeler v.  
 Thomas Circle Cafe; Klingstein v.  
 Thompson; District of Columbia v.  
 Thompson; Merritt v.  
 Thompson; Thompson v.

Thurston; Diggs v.  
 Thyson; Watkins-Whitney v.  
 Tierney; Reed v.  
 Tillinghast; Tillinghast v.  
 Tipping; Tipping v.  
 Title Guar. & S. Co.; Pavarini v.  
 Tobriner; Washington & G. R. Co. v.  
 Todd; Galt v.  
 Tolman; Tolman v.  
 Tolty; Tolty v.  
 Topham; Topham v.  
 Towson; Towson v.  
 Trail; Tuohy v.  
 Tribune Co.; Layne v.  
 Trice; Trice v.  
 Trimble; District Nat. Bank v.  
 Trott; Alfred Richards Brick Co. v.  
 Trussed Concrete Steel Co.; Fidelity Storage Corp. v.  
 Trust Co.; Howard v.  
 Trustees of the Sixth Presbyterian Church; Baltimore & P. R. Co. v.  
 Tschiffely; Tschiffely v.  
 Tyrrell; District of Columbia v.

## U

Underwood; Underwood v.  
 Union Trust Co.; Woodward v.  
 United States; Aldridge v.  
 United States; Ambrose v.  
 United States; Arnstein v.  
 United States; Atkinson v.  
 United States; Automobile Brokerage Corp. v.  
 United States; Baer v.  
 United States; Bailey v.  
 United States; Barrett v.  
 United States; Beard v.  
 United States; Beausoliel v.  
 United States; Bedell v.  
 United States; Behrle v.  
 United States; Bell v.  
 United States; Benson v.  
 United States; Biddle v.  
 United States; Bishop v.  
 United States; Blackburn v.  
 United States; Blount v.  
 United States; Bolt v.  
 United States; Bostic v.  
 United States; Bray v.  
 United States; Brown v.  
 United States; Burge v.  
 United States; Burns v.  
 United States; Cadarr v.  
 United States; Cady v.  
 United States; California Co-op. Canneries v.  
 United States; Capital Trac. Co. v.  
 United States; Carpenter v.  
 United States; Chanock v.  
 United States; Chapman v.  
 United States; Charles v.



- United States; Chase v.  
 United States; Clagett v.  
 United States; Claiborne-Annapolis Ferry Co. v.  
 United States; Clark v.  
 United States; Clifton v.  
 United States; Coratola v.  
 United States; Coupe v.  
 United States; Crawford v.  
 United States; Crichton v.  
 United States; Cross v.  
 United States; Dane v.  
 United States; Davis v.  
 United States; De Benque v.  
 United States; De Forest v.  
 United States; Dickhart v.  
 United States; Donald v.  
 United States; Donnelley v.  
 United States; Dowling v.  
 United States; Downey v.  
 United States; Eagles v.  
 United States; Easterday v.  
 United States; Egan v.  
 United States; Elliott v.  
 United States; Engle v.  
 United States; Evans v.  
 United States; Fall v.  
 United States; Fearson v.  
 United States; Fields v.  
 United States; Fillipone v.  
 United States; First Nat. Bank v.  
 United States; Fletcher v.  
 United States; Forte v.  
 United States; Friend v.  
 United States; Frisby v.  
 United States; Frizzell v.  
 United States; Fuller v.  
 United States; Fulton v.  
 United States; Garnett v.  
 United States; Gassenheimer v.  
 United States; Geist v.  
 United States; Globe Indemnity Co. v.  
 United States; Goff v.  
 United States; Gompers v.  
 United States; Gonzales v.  
 United States; Goode v.  
 United States; Gordon v.  
 United States; Grant v.  
 United States; Green v.  
 United States; Hale v.  
 United States; Hamilton v.  
 United States; Harris v.  
 United States; Harrod v.  
 United States; Hart v.  
 United States; Hawkins v.  
 United States; Henry v.  
 United States; Herald v.  
 United States; Herson v.  
 United States; H. Herfurth, Jr., Inc., v.  
 United States; Hill v.  
 United States; Holden v.  
 United States; Holmes v.  
 United States; Hopkins v.  
 United States; Horton v.  
 United States; Howard v.  
 United States; Howe v.  
 United States; Howgate v.  
 United States; Hyde v.  
 United States; Hysler v.  
 United States; Irwin v.  
 United States; Jackson v.  
 United States; Jarman v.  
 United States; Johnson v.  
 United States; Jones v.  
 United States; Jordon v.  
 United States; Keehn v.  
 United States; Kelleher v.  
 United States; Kemp v.  
 United States; Kendall v.  
 United States; Kidwell v.  
 United States; Kleindienst v.  
 United States; Lanckton v.  
 United States; Laney v.  
 United States; Latney v.  
 United States; Ledrick v.  
 United States; Lee v.  
 United States; Lem Moon Sing v.  
 United States; Lomax v.  
 United States; Lorenz v.  
 United States; Loughran v.  
 United States; Lyles v.  
 United States; Marcus v.  
 United States; Marine R. & Coal Co. v.  
 United States; Marshall v.  
 United States; Masters v.  
 United States; Maxey v.  
 United States; McAfee v.  
 United States; McBoyle v.  
 United States; McHenry v.  
 United States; McUin v.  
 United States; Means v.  
 United States; Mears v.  
 United States; Milano v.  
 United States; Miller v.  
 United States; Milton v.  
 United States; Moder v.  
 United States; Moens v.  
 United States; Moffatt v.  
 United States; Monalokos v.  
 United States; Monroe v.  
 United States; Moreland v.  
 United States; Morris v.  
 United States; Moses v.  
 United States; Moss v.  
 United States; Mostyn v.  
 United States; Murray v.  
 United States; Myers v.  
 United States; National Assn. of C. P. A. v.  
 United States; Nelson v.  
 United States; Nordlinger v.  
 United States; Norman v.  
 United States; Nuckols v.  
 United States; O'Brien v.  
 United States; O'Donoghue v.  
 United States; Ormsby v.  
 United States; Paolucci v.  
 United States; Parker v.  
 United States; Parilton v.  
 United States; Partridge v.  
 United States; Patten v.  
 United States; Patterson v.  
 United States; Paylor v.  
 United States; Penn Bridge Co. v.  
 United States; Persham v.  
 United States; Pierce v.  
 United States; Polen v.  
 United States; Posey v.  
 United States; Potomac Elec. Power Co. v.  
 United States; Price v.  
 United States; Randle v.  
 United States; Raymond v.  
 United States; Read v.  
 United States; Reeves v.  
 United States; Robinson v.  
 United States; Rohde v.  
 United States; Roney v.  
 United States; Rubin v.  
 United States; Ryan v.  
 United States; Sabens v.  
 United States; Sacks v.  
 United States; Sacrini v.  
 United States; Sanford v.  
 United States; Sanselo v.  
 United States; Scaffidi v.  
 United States; Semmes v.  
 United States; Shettel v.  
 United States; Shick v.  
 United States; Siegal v.  
 United States; Simon v.  
 United States; Sinclair v.  
 United States; Smith v.  
 United States; Snell v.  
 United States; Snowden v.  
 United States; Starr v.  
 United States; Story v.  
 United States; Swan v.  
 United States; Talbert v.  
 United States; Tatum v.  
 United States; Taylor v.  
 United States; Thompson v.  
 United States; Tomlin v.  
 United States; Tomlinson v.  
 United States; Towles v.  
 United States; Tractenberg v.  
 United States; Travers v.  
 United States; Turner v.  
 United States; Tyner v.  
 United States; Wade v.  
 United States; Wallace v.  
 United States; Weaver v.  
 United States; Weisberg v.  
 United States; Williams v.  
 United States; Willis v.  
 United States; Witters v.  
 United States; Woodward v.  
 United States; Yeager v.  
 United States; Zerega v.  
 United States Bldg. & Loan Assn; Armstrong v.



United States ex rel. Baff; Robertson v.  
 United States ex rel. Bates; Drake v.  
 United States ex rel. Browning; Dougherty v.  
 United States ex rel. Creary; Weeks v.  
 United States ex rel. Fowler Car. Co.; Ewing v.  
 United States ex rel. Frizzell; Newman v.  
 United States ex rel. Gladman; Hurley v.  
 United States ex rel. Hellman; Blair v.  
 United States ex rel. Hine; Morse v.  
 United States ex rel. Keppler; Bunch v.  
 United States ex rel. Lane; Palmer v.  
 United States ex rel. McMillan; Equitable Surety Co. v.  
 United States ex rel. Paynter; Bonding Co. v.  
 United States ex rel. Preinkert; Bladgen v.  
 United States ex rel. Roberts; Dougherty v.  
 United States ex rel. Rock; Rudolph v.  
 United States ex rel. Selden; Whitwell v.  
 United States ex rel. Selis; Coombe v.  
 United States ex rel. Societa Ligure di Armamento; McCarl v.  
 United States Fidelity & Guar. Co.; United States Shipping Bd. Merchant Fleet Corp. v.  
 United States Shipping Bd.; Eichberg v.  
 United States Shipping Board; Sloan Shipyards Corp v.  
 United States Ship. Board Emergency Fleet Corp.; Buffalo Union Furnace Co. v.  
 United States Shipping Bd. Emergency Fleet Corp.; Harwood v.  
 United States Shipping Bd. Emergency Fleet Corp.; Ingram Day Lbr. Co. v.  
 United States Shipping Bd. Emergency Fleet Corp.; Southern Bridge Co. v.  
 United States Shipping Bd. Emergency Fleet Corp.; Union Timber Products Co. v.

Universal Credit Co.; General Credit v.  
 Upper Potomac Steamboat Co.; Potomac Steamboat Co. v.

## V

Valentine; Goldsmith v.  
 Vallapiano; Sardo v.  
 Van Auken; Richardson v.  
 Van Ness; Van Ness v.  
 Van Senden; Hazen v.  
 Vassos; Capital Apartment Corp. v.  
 Vernon; Provident Relief Assn. v.  
 Vertner; Vertner v.  
 Virginia; Atlantic Ref. Co. v.  
 Virginia Portland Cement Co.; Lincoln v.  
 Vogt; Vogt v.  
 Vollbehr; Stanfield v.  
 Von Jenny; United States v.

## W

Waggaman; Catholic University v.  
 Waggaman; Dawson v.  
 Wagner; Deland v.  
 Walker; American Security & Trust Co. v.  
 Walker; Bailey v.  
 Waltenberg; Waltenberg v.  
 Ward; Gray v.  
 Wardell; Ragan v.  
 Wardell; Serkowich v.  
 Wardman Constr. Co.; Deming v.  
 Waring; Brown v.  
 Warner; Baker v.  
 Warner; Walker v.  
 Warner; Warner v.  
 Warner; Young v.  
 Warren; Staples v.  
 Warwick; Rudolph v.  
 Washington, A. & Mt. V. R. Co.; Macfarland v.  
 Washington & R. G. Co.; Ferguson v.  
 Washington Ben. Endowment Assn.; Gilbert v.  
 Washington Hosp. for Foundlings; Ould v.  
 Washington Loan & Trust Co.; District Nat. Bank v.  
 Washington Loan & Trust Co.; Fardon v.  
 Washington Loan & Trust Co.; Johnson v.  
 Washington Market Co.; District of Columbia v.

Washington, P. & C. R. Co.; Chesapeake Beach R. Co. v.  
 Washington R. & E. Co.; Hazen v.  
 Washington Section; Consolidated Radio Artists v.  
 Washington Terminal Co.; District of Columbia v.  
 Washington Terminal Co.; Poff v.  
 Washington Terminal Co.; Richards v.  
 Washington Times Co.; Bloedorn v.  
 Washington Times Co.; Rose v.  
 Washington-Virginia R. Co.; Hoffman v.  
 Watkins; United States v.  
 Wayland; Eggleston v.  
 Webb; Ormsby v.  
 Wedderburn; Wedderburn v.  
 Weisman; Spector v.  
 Welch; Guthrie v.  
 Welch; Krupsaw v.  
 Welch; Rawley v.  
 Welch; Welch v.  
 Welch; Whelan v.  
 Wells; Wells v.  
 West; United States v.  
 Westby; Chicago, M. & St. P. R. Co. v.  
 Westcott; Shelley v.  
 Western Union Tel. Co.; United States Shipping Bd. Emergency Fleet Corp. v.  
 Wetmore; Karrick v.  
 Wheat; Fletcher v.  
 Wheat; Laughlin v.  
 Wheatley; Bean v.  
 Wheeler; District of Columbia v.  
 White; Anderson v.  
 White; Barry v.  
 White; Beal v.  
 White; Madison v.  
 White; Savage v.  
 White; Shell Eastern Petroleum Products v.  
 White; Wagner v.  
 White; Wood v.  
 Whiteford; Curtis v.  
 Wilcox; District of Columbia v.  
 Wiley; Fitzgerald v.  
 Wilkes; Wilkes v.  
 Williams; Dangerfield v.  
 Williams; Hasler v.  
 Williams; Sommerville v.  
 Williams; Williams v.  
 Willis; Campbell v.  
 Wilson; Callan v.  
 Wilson; Perry v.  
 Wilson; Union Tool Co. v.



Wineland; Wagenhurst v.  
Winston; Winston v.  
Wisconsin Cent. R. Co.; Powell v.  
Witbeck; United States v.  
Wood; United States v.  
Wood; Willard v.  
Woodbury; District of Columbia v.  
Woodin; Copper v.  
Woodrough; O'Malley v.  
Woods; Faunce v.

Woodward; Levy Court v.  
Wren; Goodman v.  
Wrenn; United States Fidelity &  
Guar. Co. v.  
W. S. Barstow & Co.; United  
States ex rel. Wylie v.  
W. T. Walker Brick Co.; Knight v.  
West Virginia Pulp & Paper Co.;  
Central of Georgia R. Co. v.  
Wynne; Fitzgerald v.

## Y

Yandon; Second Natl. Bank v.  
Young; Thomas v.  
Youngman; Kenyon v.

## Z

Zerbst; Bracey v.  
Zerbst; Farnsworth v.  
Zeust; Staffan v.















# COMBINED GENERAL INDEX

Volume 1, §§ 1-101—24-424; Volume 2, §§ 25-101—49-304

<b>ABANDONMENT</b>	Sec.	<b>ABATEMENT AND REVIVOR—Continued</b>	Sec.
See DISMISSAL OF ACTIONS; STREETS AND OTHER		Equity	12-108
WAYS		Bill of revivor unnecessary	12-109
Animals, cruelty	22-802, 22-812	Death of defendant after interlocutory decree	12-111
Children, penalty	22-901, 22-903	Defenses by representative	12-111
Desertion of spouse, separation from bed and board	16-403	Effect	12-111
Parent of children under 16, penalty	22-903	Proceedings	12-111
Property clerk, abandoned property, custody		Death of defendant after right to interlocutory decree	12-111
Property not claimed within year	4-167	Suggestion of death	12-110
Record	4-152, 4-153	Publication to representative	12-110
Prosecution of criminal charge, acts constituting	23-104	Subpena to representative	12-110
Street-car line, removal of tracks	44-211	Survival where rights survive	12-108
Wife desertion, penalty, support money	22-903—22-906	Marriage of party	12-112
		Additional parties	12-112
		Amendment of pleadings	12-112
		Effect	12-112
		Not to abate actions	12-112
<b>ABATEMENT</b>		New parties	12-105
Accumulations of abandoned vehicles and other junk	5-504	Liability for costs	12-106
Buildings erected or altered in violation of law, nuisances	5-408	Rights	12-105
Prostitution, houses of	22-2714	New parties defendant, limit to liability	12-106
Steam boilers, unauthorized use	1-713	Survival, exceptions	12-101
Uncovered wells, cistern, or dangerous excavations	5-504	Survival of actions	12-101
Unsafe structures and excavations	5-504		
<b>ABATEMENT AND REVIVOR</b>		<b>ABATTOIRS</b>	
Common-law actions	12-102	License	47-2316
Death of defendant	12-102	Approval of health officer	47-2316
Procedure	12-102	Fee	47-2316
Substituted defendants	12-102	Location laws, compliance with	47-2316
Death of plaintiff	12-103		
Procedure	12-103	<b>ABBEY PLACE</b>	
Substitute plaintiffs	12-103	Third Place Northeast, name changed	7-107 note
Death of substituted parties	12-104		
Death of joint defendant	12-107	<b>ABBREVIATIONS</b>	
Death of party		Certified Public Accountant	2-901
Bill of revivor	12-116	D. D. S., dentistry law	2-315
Notice to representative, publication	12-116	Dentistry, falsely assuming title, penalty	2-320
Notice to representative, service	12-116	D. M. D., dentistry law	2-315
Publication to representative, effect	12-114	Pleadings	13-203, 28-102, 28-103
Representative	12-115	Practitioners of veterinary medicine	2-808
Evasion of process, effect	12-115		
Leaving District prior to service of process, effect	12-115	A. B. C.	
Summons to representative, effect	12-114	Gaming, keeping game or device or inducing play, penalty	22-1504
Supplemental bill in nature of revivor	12-116		
Death of party after final decree	12-113	<b>ABDUCTION</b>	
Execution of decree	12-113	See KIDNAPING; PANDERING	
Rights of representatives	12-113	Enticing boys or girls from National Training Schools	32-818, 32-907
Subpena scire facias against representatives	12-113	Female under 16 for immoral purposes	22-2704



<b>ABORTION</b>	Sec.	<b>ABUTTING OWNERS—Continued</b>	Sec.
Advertising drugs or instruments, penalty	22-2001	Snow and ice, removal from sidewalk	7-801—7-806
Definition	22-201	Street improvement assessment	7-624, 7-625
Penalty	22-201	Front-foot rule	7-611, 7-612
<b>ABSCONDERS</b>		Streets and highways abandoned under Per-	
See ABSENTEES' AND ABSCONDERS' ESTATES; Ex-		manent Highway Plan, reversion of land	7-118
TRADITION		<b>ACCEPTANCE</b>	
<b>ABSENTEES</b>		See NEGOTIABLE INSTRUMENTS	
Absence for seven years, presumption of		Definition	
death	14-501	Negotiable instrument law	28-101
Estates	20-701	Statute of frauds under Uniform Sales	
Service of process by publication	13-108	Act	28-1104
<b>ABSENTEES' AND ABSCONDERS' ESTATES</b>		Streets dedicated by landowners, conditions	7-117
Distribution after 14 years' absence	20-713	<b>ACCESSORIES</b>	
District attorney to be party	20-701	See CRIMINAL OFFENSES	
Fees of marshal	20-702	Accessory after the fact	22-106
Interest of absentee to cease after 14 years	20-712	Accessory before the fact	22-105
Notice of hearing	20-703	<b>ACCIDENT AND HEALTH INSURANCE</b>	
Publication and posting	20-704	See INSURANCE AND INSURANCE COMPANIES	
Return date	20-704	<b>ACCOMMODATION PARTIES</b>	
Petition for receiver	20-701	Definition, negotiable instrument law	28-206
Contents	20-701	Liability to holder for value	28-206
Grounds	20-701	<b>ACCOUNTANTS</b>	
Persons entitled to petition	20-701	Board of Accountancy	2-903
Presumption of death not affected	20-715	Annual report	2-908
Receiver	20-705	Appointment	2-903
Adjusting claims	20-711	Compensation	2-908
Appointment	20-705	Expenses of administering law, payment	2-908
Appointment to receive only debts due		Number of members	2-903
estate	20-708	President	2-903
Bond	20-705	Qualifications of members	2-903
Care, custody and leasing of property	20-709	Quorum	2-903
Compensation	20-712	Removal of member for cause	2-903
Delivery to executors, assignees, trustees	20-712	Secretary	2-903
Failure to appoint within 13 years, time		Surplus funds, payment into United	
of distribution	20-714	States Treasury	2-908
Possession of additional property	20-707	Term of office	2-903
Schedule of property received	20-706	Treasurer	2-903
Support of deserted wife and children	20-710	Certification without examination, practi-	
Warrant to marshal	20-702	tioners from other States, reciprocity	2-906
<b>ABUTTING OWNERS</b>		Certified Public Accountant	2-901
Alley closed by dedication of new way, rever-		Citizenship	2-904
sion of land	7-303	Corporations prohibited from assuming	
Alley not an original alley closed, reversion of		title	2-901
land	7-302	Educational requirements	2-904
Alleys less than ten feet wide, closing, owner-		Good moral character required	2-904
ship of land	7-304	Minimum age	2-904
Apportionment of certain closed streets		Partnerships	2-901
among	7-124	Requirement concerning experience	2-904
Closing and readjusting streets, reversion of		Waiver of requirement for certificate	2-904
title	7-401	C. P. A., right to use abbreviation	2-901
Closing of alleys on petition of property-		Examination and certification fee	2-908
owners, future ownership of closed alleys	7-306	Re-examination of applicant, fee	2-908
Closing of certain streets and highways au-		Successful applicants	2-908
thorized, reversion of title	7-123	Examination for title of C. P. A.	2-905
Closing or changing of alleyways on petition		Publication of notice	2-905
of property-owners, future ownership of		Time of holding	2-905
property	7-307	Penalty for practicing without certificate	2-909
Curbing, assessment against property	7-606	"Public accountant" defined	2-902
Michigan Avenue, abandonment in part, rever-		Revocation of certificate	2-907
sion of title	7-129	Corporation counsel, duties	2-907
Purchase of lands by Secretary of Interior	9-305	Grounds	2-907
Sidewalks, assessment against property	7-606		



ACCOUNTANTS—Continued		Sec.	ACKNOWLEDGMENTS—Continued		Sec.
Revocation of certificate—Continued			Deeds and other instruments—Continued		
Hearing		2-907	Defective acknowledgments of married women		45-409
Nonappearance of holder at hearing, effect		2-907	Deeds of conveyance		45-401—45-412
Notice given		2-907	Absence of certain acknowledgments remedied		45-411
ACCOUNTS AND ACCOUNTING			Attorney, acknowledgment by, invalid		45-401
See PROBATE COURT TERM			Attorney not to acknowledge		45-401
Actions on account	16-101—16-106		Before District Court clerk		45-402
Audit of accounts of parties	16-102		Before judges of courts of District		45-402
Certificate of counsel and affidavit of exceptant to report of auditor	16-102		Before notaries public		45-402
Conclusiveness of auditor's report	16-103		Before recorder of deeds		45-402
Exceptions to report of auditor	16-102, 16-103		Certificate of officer taking, form		45-402
Executors and administrators, right of action against	16-101		Deeds prior to 1902		45-412
Fiduciaries, action against	16-101		In foreign country		45-404
Filing of report by auditor	16-102		American consular officer may take		45-404
Frivolous exceptions to auditor's report, overruling	16-105		American legation officer may take		45-404
Joint tenants, action by or against	16-101		Certification		45-404
Judgment, frivolous exceptions to report of auditor	16-105		Judges may take		45-404
Judgment on auditor's report	16-102		Notary public may take		45-404
Judgment on findings of jury	16-106		In Guam, Samoa, and Canal Zone		45-405
Jury trial of exceptions to auditor's report	16-104		In Philippine Islands and Puerto Rico		45-406
Notice of filing of auditor's report	16-102		Outside District		45-402
Numerous exceptions to report of auditor, separate trial	16-104		Chancellor of a state may take		45-403
Parties plaintiff and defendant	16-101		Judge of Federal District Court may take		45-403
Reference to auditor	16-103		Judge of territorial court may take		45-403
Report of auditor	16-102		Judge or justice of Supreme Court may take		45-403
Tenants in common, action by or against	16-101		Judges of courts of record and law may take		45-403
Trial of exceptions to auditor's report	16-103, 16-104, 16-106		Justice of the peace may take		45-403
Assignment of accounts	28-2503		Notaries public may take		45-403
Board of Public Welfare	3-109		Requirements		45-403
Clerk of Court of Appeals, accounting for fees	11-204		Within District		45-402
Police Court, audit	11-627		Clerk of District Court may take		45-402
ACIDS			Judges of courts may take		45-402
Poisonous compounds, sale, restrictions	2-612		Notaries public may take		45-402
ACKNOWLEDGMENTS			Recorder of deeds may take		45-402
Authority to take			Deeds of corporations		45-302
Clerk of District Court	11-402		In the District, form		45-402
District Court clerk	45-402		Married women		1-511
Judges of courts of district	45-402		Mortgages		45-601
Notaries public	45-402		Notary's power to take	1-503, 1-511	
Recorder of deeds	45-402		Exception		1-501
Bill of sale	42-101, 42-102		Fee		1-514
Bonds and contracts relating to land	45-505		Restriction		1-501
Chattel mortgage	42-101, 42-102		Outside District		45-402
Commissioners of deeds	1-401		Trust deeds		45-601
Conditional sales	42-103		ACONITE		
Deeds and other instruments			Poison, sale, restrictions		2-612
Certain defective acknowledgments validated	45-408		ACTIONS		
Certain irregular acknowledgments validated	45-407		See ABATEMENT AND REVIVOR; BONDS AND UNDERTAKINGS; JURISDICTION; LIMITATION OF ACTIONS		
Defective acknowledgments, married woman's power of attorney	45-410		Accounts, actions on	16-101—16-106	
			Adoption proceedings	16-201—16-207	
			Assignment of dower	16-1305, 16-1306	
			Attachment and garnishment	16-301—16-335	
			Change of name	16-1101—16-1103	
			Commencement, Small Claims and Conciliation Branch, Municipal Court	11-805	
			Compromise by Commissioners	1-902	



ACTIONS—Continued		Sec.	ADOPTION		Sec.
Damage actions for causing wrongful death			Consent		16-202
	16-1201—16-1203		Adoptee		16-202
Definition,			Exception, father of child born out of wedlock		16-202
Negotiable instruments law	28-101		Natural parents		16-202
Uniform Sales Act	28-1606		Prior adoptive parents		16-202
Disposal, Small Claims and Conciliation			When dispensed with		16-202
Branch, Municipal Court	11-808		Decree		16-203
District's power to sue and be sued	1-102		Interlocutory		16-203
District sued, service of process on Commissioners	1-901		Name of adoptee		16-205
Divorce and separation	16-401—16-421		Notice to Bureau of Vital Statistics		16-204
Ejectment	16-501—16-534		Prerequisites		16-203
Eminent domain	16-601—16-644		Rights of inheritance and succession		16-205
Gaming transactions, actions to recover losses	16-701—16-707		Docket, inspection on order of court only		16-206
Habeas corpus	16-801—16-808		Jurisdiction		16-201
Heard at special terms of District Court	11-313		Notice of petition		16-201
Joint contracts, actions on	16-901—16-906		Petition		16-201
Mandamus	16-1001—16-1010		Content		16-201
Negligence causing death	16-1201—16-1203		Investigation		16-201
On bonds in penal sum, with avoidance condition	28-2405		Approved social agency		16-201
Partition proceedings	16-1301—16-1304		Board of Public Welfare		16-201
Patent infringement	11-307		Recognized religious, fraternal or-ganization		16-201
Public contractors, action on bonds, procedure, interveners	1-804		Joinder by petitioner's spouse required		16-201
Quieting title obtained by adverse possession	16-1501		Qualifications of petitioner		16-201
Reference of questions of law and fact by court	16-1701		Prior proceedings valid		16-207
Replevin	16-1801—16-1814		Records, inspection on court order only		16-206
Set-off	16-1901—16-1909		ADULTERATION		
Suits by or against married women	30-208		See FOOD AND DRUGS		
Sureties, action for release	16-2001—16-2005		Candy, penalty	33-201, 33-202	
Survival	12-101		Definition, food and drug law	33-103	
Tender of funds into court	16-1401, 16-1402		Food and drugs	33-101—33-110, 33-201	
ADDING MACHINES			ADULTERY		
Trading in old machines	1-819		Definition	22-301	
ADEMPTION			Ground for divorce	16-403	
Legacy by advancement or other gift	19-109		Ground for legal separation	16-403	
ADJOINING OWNERS			Penalty	22-301	
See ABUTTING OWNERS			ADULTS		
ADMINISTRATIVE DECISION			Jurisdiction of juvenile court	11-907	
Definition, Zoning Law	5-425		ADVANCEMENTS		
ADMINISTRATIVE OFFICER OF BODY			See DECEDENTS' ESTATES		
Construction of terms, Zoning Law	5-425		Considered in allotment of shares	18-707	
ADMINISTRATORS			Equalization of shares in personality	18-707	
See EXECUTORS AND ADMINISTRATORS			Equalization of shares in real property	18-108	
ADMIRALTY			Heir electing to share in partition, bringing advancement into hotchpot	18-108	
Bonds and undertakings	28-2403		Maintenance or education not considered advancement	18-707	
Principles, effect of Code	49-301		Money given without view to portion or settlement	18-707	
Reference of questions of law and fact	16-1701—16-1719		Satisfaction of devise or bequest	19-109	
ADMISSIONS			Widow's share not increased	18-707	
Judgment for part of cause admitted	13-216		ADVERSE POSSESSION		
Not sufficient proof in divorce	16-419		See QUIETING TITLE OBTAINED BY ADVERSE POSSESSION		
ADMISSION TO BAR			Acts not amounting to adverse possession	16-501	
See ATTORNEYS			Conveyance of land adversely held	45-105	
			Defenses in action in ejectment	16-515	
			Periods of limitation	12-201	
			Quieting title obtained adversely	16-1501	



**ADVERTISEMENT**See **NOTICES; PUBLICATION; PUBLICATION OF NOTICE**

Capitol grounds, display prohibited 9-108

**Dentists**

Definition 2-330

Revocation or suspension of license 2-311

False 22-1411-22-1413

Definition 22-1411

Penalty 22-1413

Prosecution 22-1412

Institutions of learning, degrees, right to issue 29-418

Lewd or indecent publications or articles, penalty 22-2001

Life insurance companies 35-409, 35-410

Notice of sales on execution 15-214

Outdoor signs in general, power to regulate and license 1-231-1-233

Podiatrists, "advertising" defined 2-718

Podiatry, unprofessional conduct 2-707

Public contracts, proposals for bids 1-808, 1-809  
Printers' rates 1-809

Real estate sale or rental signs, restrictions 7-1001

United States flag or colors, use prohibited 22-3414

Warehouseman's lien, sale of goods to satisfy 28-1927

**ADVISORY COUNCIL**See **ZONING REGULATIONS****AERONAUTICS**See **AIRPORT****AFFIDAVITS**

Architect 2-1016

Attachment and garnishment 16-301

Complaint for inspection of plumbing 1-727

Notary public, power to take 1-503, 1-511  
Restriction 1-501

Public contractor as to completion of works and payment of claim 1-804

Supplemental affidavits in pleadings 13-301

**AFFIRMATIONS**See **OATHS**

Use in place of oath 49-206

**AFFRAY**

Definition, penalty 22-1101

Jurisdiction of Police Court 11-604

**AGED AND INFIRM PERSONS**See **OLD-AGE ASSISTANCE; SOCIAL SECURITY****AGE LIMITS**

Appointments to police department, determination 4-107

Fire department, original appointments, power to determine 4-403

**AGENT**See **REAL ESTATE BROKERS AND AGENTS; SALES, UNIFORM ACT**

Attachment proceedings, execution of affidavit 16-301

Effect of statute of frauds 28-1104

Embezzlement of property, penalty 22-1202

Indorsing negotiable instrument, negating personal liability 28-315

Sec.

**AGENT—Continued**

Negotiable instrument dishonored in hands of 28-706

Negotiating negotiable instruments, liability 28-510

**Notice of dishonor**

Right to give 28-703

Right to receive 28-709

Representing unlicensed insurance company, penalty 35-201

Signing negotiable instrument 28-120, 28-121

Authority to sign, proof 28-120

Liability of 28-121

No particular form necessary 28-120

Principal undisclosed, liability 28-121

Signature by procuration, effect 28-122

Sites for buildings, purchase for commissioners of District 1-812

**AGREEMENTS**See **CONTRACTS****AGRICULTURE AND HORTICULTURE**See **DEPARTMENT OF AGRICULTURE; PLANTS**

Federal laws applicable to District, reference pp. 679, 680

Insect pests, control measures 6-904, 6-905

Plant diseases 6-904, 6-905

Weed control 6-901, 6-903

**AIRPORT**

National airport 2-1601, 2-1603

Administrator 2-1601

Description of boundaries 2-1601

Leasing of space or property within or upon airport 2-1603

Powers and duties of administrator 2-1602

**ALARM GONGS**

Failure to install after notice, penalty 5-308

Installing in buildings, when required 5-303

**ALCOHOL**

Definition 25-103

**ALCOHOLIC BEVERAGES**

Alcohol for nonbeverage purposes 25-108

Description 25-108

Sale for beverage purposes, penalty 25-108

Alcoholic Beverage Control Board 25-104

Appeals from license revocations 25-106

Appointment 25-104

Duties 25-106

Employees 25-104

Licenses, jurisdiction over 25-106

Members, employees barred from liquor business 25-105

Perjury before 25-126

Salaries 25-104

Term 25-104

Testimony, power to compel 25-126

Witness fees 25-126

Beer tax 25-138

Beverage tax and stamps 25-124

Citation of law relating to 25-102

Commissioners of the District

May forbid imports by retailers 25-112

May issue permits to retailers for importations 25-112

Powers 25-107



ALCOHOLIC BEVERAGES—Continued		Sec.	ALCOHOLIC BEVERAGES—Continued		Sec.
Containers to be labeled for content		25-134	Manufacturers to report sales monthly		25-123
Counterfeiting or forging stamps, penalty		25-124	Minors misrepresenting age to obtain, penalty		25-130
Definitions		25-103	National Prohibition Act, partial repeal of		25-101
Alcohol		25-103	Penalties		25-132
Alcoholic beverages		25-103	Publication of regulations		25-107
Beer		25-103	Regulations		25-107
Beverage		25-103	Retailers		
Board		25-103	Reporting purchases monthly		25-123
Club		25-103	Selling on credit		25-133
Commissioners		25-103	Rules and regulations		25-107
District		25-103	Sales to intoxicated persons		25-121
Hotel		25-103	Sales to minors		25-121
Manufacture		25-103	Sales to notoriously intemperate persons		25-121
Meals		25-103	Sale without license prohibited, exceptions		25-109
Person		25-103	Saving clause		
Restaurant		25-103	For prior law		25-135
Sale		25-103	On invalidity		25-136
Sell		25-103	Search warrants for illegal beverages		25-129
Spirits		25-103	Grounds for, issuance		25-129
Table		25-103	Resisting officer serving, penalty		25-129
Tavern		25-103	Seizure of unstamped beverages		25-124
Wine		25-103	Unlawful transportation, penalty		25-137
Delivery outside District not authorized		25-102	Wholesalers to report purchases monthly		25-123
Drinking prohibited in streets, parks, unlicensed public places, penalty		25-128			
Federal laws applicable to District, reference			ALIAS WRITS		
	28-2803 note		See EXECUTIONS		
Intoxicated persons not to be in public places, penalty		25-128	ALIENATION		
Intoxicated persons not to operate certain vehicles, penalty		25-127	Chattels real		45-103
Liability of licensees for refusing sale where prohibited		25-121	Freehold estates		45-104
Licensees not to permit sale by minors, convicts		25-125	Future estates		45-102
Licenses		25-107	Real property, restraints against alienation		45-102
Annual, expiration		25-114	ALIENS		
Applications		25-110	Dentistry, right to practice		2-307
Contents		25-115	Descent of property through alien ancestor		18-110
Notice to be published		25-115	Descent through alien		18-110
Remonstrances, hearing		25-115	Disqualified from acting as executor or administrator		20-101
Separate for each location		25-115	Ownership of real property in District		45-1501—45-1505
Classifications		25-111	Podiatry, licensing to practice, restriction		2-705
Manufacturer's		25-111	Real property, right to acquire and hold		45-1501—45-1505
Retailer's		25-111			
Solicitor's		25-111	ALIMONY		
Wholesaler's		25-111	See DIVORCE		
Forfeiture for becoming bail for violator		25-122	Alimony pendente lite		16-410
Monthly, expiration		25-114	Permanent alimony		16-410
Premises for lawful sale to be stated		25-114	Where husband obtains divorce		16-412
Records required		25-110	ALKALOIDS		
Restrictions on holding more than one		25-113	Poison, sale, restrictions		2-612
Restrictions on location of licensees		25-116	ALLEY DWELLINGS		
Revocation		25-118	See EMINENT DOMAIN		
Causes		25-118	Acquisition of lands and buildings, purpose		5-103
Discretionary closing for year		25-118	"Alley" defined		5-101, 5-109
Hearing		25-118	Alley required to connect with streets bordering square		5-101
Manufacturer interested in wholesaling, retailing		25-119	Alley required to run straight		5-101
Wholesaler interested in retailing		25-120	Alteration or conversion of building into dwelling, prohibition against, penalty		5-106
To whom granted		25-110	Annual report of Authority		5-106
Transfer		25-117			
Under prior law		25-131			



ALLEY DWELLINGS—Continued	Sec.	ALLEY DWELLINGS—Continued	Sec.
Appropriation of funds for slum-clearance projects	5-105	Repair or reconstruction	5-101
Amount dedicated to low-cost housing and slum clearance	5-105	Alley less than 30 feet wide	5-101
President making available from National Industrial Recovery Act appropriations	5-105	Alley without utility connections	5-101
Authority, powers and duties	5-113	Cases in which permit refused	5-101
Borrowing of funds authorized	5-105, 5-114	Depreciation or damage exceeding one-half original value	5-101
Considered public housing agency	5-114	Rooms for grooms or stablemen	5-101
Delegation of powers to	5-103	Sewer connections wanting	5-101
Federal aid, acceptance authorized	5-114	Replatting and improvement of property	5-103
Gifts, acceptance authorized	5-105	Replatting of lands, approval	5-104
Housing projects, execution	5-113	Report of Authority to President	5-101
Purpose and intent of act	5-114	Sale of buildings and property acquired by Government	5-103
Sites, power to acquire	5-113	Set-back line	5-101
Taking over and operating federal housing projects	5-114	Sewer connections required	5-101
Borrowing of funds authorized	5-105	Sidewalk space	5-101
Borrowing from United States Treasury, amount	5-105	Slum-clearance and improvement work	5-103, 5-104
Interest rate on loans from treasury	5-105	Accomplishment of objects of act	5-106
Security, purposes for which used	5-105	Agreements between District and Authority	5-115
Completion of work, submission of report to Congress	5-107	Architectural and engineering services, power to secure	5-105
Condemnation, depreciation, or damage exceeding one-half original value	5-101	Completion of work before July 1, 1944, loans excepted	5-107
Constitutionality of act, provisions separable	5-110	Contributions by District of Columbia authorized	5-115
Construction of sewers and watermains	5-103	Dedication of property by District	5-115
Conversion of building into dwelling, when prohibited	5-101	Laying out and improving of streets and ways	5-115
Conversion of Inhabited-Alleys Fund	5-105	Loans by District authorized	5-116
Declaration of policy	5-103	Parks or recreational center, laying out by District	5-115
Definition	5-109	Providing of utilities by District	5-115
"Development" defined	5-112	Purchase of reference books, directories, and periodicals authorized	5-105
"Dwelling" defined	5-109	Services and purchases not aggregating more than \$100, advertisement for bids unnecessary	5-105
Electric lights	5-101	Stables and other buildings, location	5-101
Eminent domain proceedings	5-103, 5-104	Tax exemption of property of Authority	5-114
Damages exceeding benefits, payment of excess	5-104	Use after June, 1923, declared unlawful	5-101
Law governing actions	5-104	Violation of law, general penal clause	5-102
Power vested in Authority	5-104	Water connections required	5-101
Gas connections required	5-101	Width of roadway	5-101
Housing project			
Definition	5-112	ALLEYS	
Powers of Authority	5-113	See ABUTTING OWNERS; DEDICATION; EMINENT DOMAIN; STREETS AND OTHER WAYS	
"Inhabited alley" defined	5-109	Abutting owners	7-302—7-304, 7-306, 7-307
Installation of street lights	5-103	Dedication by plat	1-614
Loans		Definition, Alley Dwelling Law	5-101, 5-109
First lien on property	5-103	Laying out in building lots subdivisions	1-620
Maximum interest rate	5-103	Police regulations, powers of Commissioners	1-623
Minimum width of alley	5-101		
Name of act	5-111	ALMSHOUSES	
Notice to owners of intention to demolish, remove, or have vacated	5-108	Exemption from taxation	47-801
Occupancy after July 1, 1944 prohibited, penalty	5-106	ALTERATION	
Paving or repaving of streets and alleys	5-103	Negotiable instrument, effect	28-806
Powers vested in President	5-103	Material alterations enumerated	28-807
Delegation of authority	5-104	Warehouse receipts, liability of warehouseman	28-1906
Prohibition against construction	5-106		
Purchase of lands, maximum price	5-105	ALTERNATIVE FUTURE ESTATES	
Rebuilding and reconstruction work, limitation on dividends	5-103	Two or more future estates created	45-813



<b>AMBULANCES</b>		<b>ANATOMICAL BOARD—Continued</b>	
See <b>MOTOR VEHICLES</b>		Human body requiring burial at public ex- pense	2-202
<b>AMENDMENTS</b>		Notice given board	2-202
See <b>PLEADINGS</b>		Relatives claiming body and requesting burial	2-202
Alleys or minor streets, condemnation pro- ceedings, description of property	7-321	Request before death for burial or crema- tion, effect	2-202
Definitions, Zoning Law	5-425	Members	2-201
Eminent domain proceedings, land for streets	7-212	Prosecution of violations of law	2-209
Pleadings	13-301	Purchase or sale of bodies prohibited	2-206
As basis for continuance	13-302	Records of transaction	2-201
Petty errors by clerk	13-304	Open to inspection	2-201
Zoning regulations	5-415, 5-416	Relative or friend claiming body for burial	2-202
Submission to Advisory Council	5-417	Representation of medical schools on board	2-201
<b>AMERICAN LEGION</b>		Transmission of bodies out of District, pro- hibited	2-206
Property exempted from taxation	47-828	Wilful neglect to perform duties, penalty	2-208
<b>AMMONIA</b>		<b>ANATOMY</b>	
Household ammonia, sale, regulation	2-601	Dentist, examination for license	2-308
<b>AMUSEMENT PARKS</b>		Healing arts, examination of applicants for license	2-108
Grounds for, license	47-2324	Podiatry license examinations	2-705
Prerequisites to license	47-2302	<b>ANCILLARY</b>	
<b>ANACOSTIA</b>		Executors and administrators	20-505
Engine house, use authorized	4-412	Guardians	21-115, 21-116
Formerly Uniontown	1-108	<b>ANESTHETIC</b>	
<b>ANACOSTIA BRIDGE</b>		Dentist, examination for license	2-308
Maintenance and repair, payment of cost	7-505	<b>ANIMALS</b>	
Paving between tracks, payment by railroad company	7-505	See <b>BULL FIGHTS; COCK FIGHTING; CRUELTY TO ANIMALS; DOGS</b>	
Railroads' right to use bridge, apportionment of cost	7-505	Bull fights	22-809, 22-810
Reciprocal trackage and compensation among railroads	7-505	Cock fighting	22-809, 22-810
Underfloor electrical conductors or cables, in- stallation, payment of cost	7-505	Cruelty to animals	
<b>ANACOSTIA PARK</b>		As criminal offense	22-801
Reclaimed land made part of park system	8-161	Police Court jurisdiction	11-603
<b>ANACOSTIA RIVER</b>		Dead animals, contracts for collection and dis- posal	6-502
Construction of structures in	43-1304	Dogs	1-224, 1-230, 22-1111
Construction of tunnels in	43-1304	Criminal offenses	22-1110, 22-1111
Drawbridges, submarine cables, use	7-1231	Muzzling	1-230
Lands along, clearing title of United States	8-104	Power to make regulations	1-224
<b>ANATOMICAL BOARD</b>		Domestic animals, power to provide for im- pounding	1-230
Control over and distribution of dead human bodies	2-201	Driving, riding, leading animals on footways, penalty	22-1118
Creation	2-201	Driving through streets, power to regulate	1-224
Dead human body requiring burial at public expense, delivery to board on notice	2-202	Federal laws applicable to District, refer- ence	28-2803 note
Delivery of bodies to medical schools and boards		Fights with, penalty	22-1105
Bond required of schools	2-204	Property clerk, sale of unclaimed animals	4-161
Expense of delivering bodies paid by schools and boards receiving same	2-207	Right of unlicensed person to doctor free of charge	2-808
Failure to pay expense, additional bodies refused	2-207	Targets, use as, prohibited	47-2343
Purposes for which used	2-205	<b>ANNULMENT</b>	
Use of bodies within District required	2-205	See <b>DIVORCE; MARRIAGE</b>	
Grave robbery prohibited	2-206	Child as plaintiff	30-104
Health officer of District a member	2-201	Grounds	
		Bigamy	16-403, 30-103
		Lunacy	16-403, 30-103
		Marriage procured by fraud	16-403, 30-103
		Nonage	16-403, 30-103



ANNULMENT—Continued		Sec.	APPEALS—Continued		Sec.
Grounds—Continued			Board of Pharmacy hearings, review by Court of Appeals		2-606
Physical incapacity		30-103	Board of Zoning Adjustment, appeals to Court of Appeals		5-420
Procuring marriage by coercion	16-403,	30-103	Bills of exception		11-205
Idiot or lunatic as next friend		30-104	From District Court		17-101, 17-102
Parties plaintiff		30-104	From Juvenile Court		11-934
Person knowingly and wilfully contracting voidable marriage not to be plaintiff		30-104	From Municipal Court		11-723, 17-104
ANSWERS			From Police Court		17-103
See PLEADINGS			From Public Utilities Commission		43-705
ANTECEDENT DEBT			Original paper, power to require sending up		11-205
Consideration for negotiable instrument		28-202	Record on appeal, power to prescribe what shall constitute		11-205
ANTEDATED NEGOTIABLE INSTRUMENT			Rules, power to adopt		11-205
Title acquired as of date of delivery		28-113	Two judges hearing cause, consent of parties		11-205
Validity		28-113	Two justices hearing cause, division in opinion, case affirmed		11-205
ANTENUPTIAL DEBTS			Dentist's license to practice, appeal from revocation or suspension		2-312
Continued liability of wife		30-210	Disbarment		11-1303
ANTIDEFICIENCY ACT			District Court to Court of Appeals		17-101, 17-102
Applicable to District of Columbia		47-105	Decree, final		17-101
ANTIMERGER LAW			Interlocutory decree		17-101
See PUBLIC UTILITIES			Civil actions		17-101
ANTIMONY			Criminal actions nonapplicable		17-102
Poisonous compound, sale, restrictions		2-612	Judgment, final		17-101
ANTITRUST ACT			Order, final		17-101
Applicable to District, reference		p. 630	Eminent-domain proceedings, land for streets		7-214
APARTMENT HOUSES			Aggrieved party's right to appeal		7-214
See FIRE ESCAPES AND SAFETY PROVISIONS; HOTELS AND LODGINGHOUSES			Parties not appealing, payment of award		7-214
"Apartment house" defined		47-2329	Proceedings not stayed		7-214
Definition		5-312	Healing arts, refusal of license to practice		2-129
Fire escapes and safety provisions	5-301—	5-315	Procedure		11-934
Fireproof construction, when required		5-403	License to practice healing arts suspended or revoked		2-123
License		47-2329	Municipal Court to Court of Appeals		11-723, 17-104
Prerequisites		47-2302	Appellant's recognizance		17-104
Without restaurant, fee		47-2329	Application for discretionary writ of error		17-104
With restaurant, fee		47-2329	Procedure		11-723
Nonfireproof buildings			Stay of execution		17-104
Limitation on height		5-401	Nurses certificate revoked or suspended		2-407
Number of stories		5-401	Nurses, denial of registration or reregistration		2-406
Right to dispose of own refuse		6-507	Podiatrists, revocation or suspension of license		2-708
APOTHECARY			Police Court to Court of Appeals		17-103
Definition		33-401	Bill of exceptions, petition		17-103
License		47-2308	Defendant's recognizance		17-103
APPEALS			Discretionary writ of error		17-103
See CRIMINAL PROCEDURE			Defendant		17-103
Alleys or minor streets, condemnation proceedings		7-323	District		17-103
Payment of awards to parties not appealing		7-323	United States		17-103
Payment of damages after final determination		7-323	Notice of intention		17-103
Proceedings not stayed		7-323	Police department trial boards, appeals to Commissioners of District		4-122
Architects, certificate of registration revoked		2-1028	Proceedings not stayed, Probate Court		11-511
Barber, refusal of registration certificate		1-1110	Tax appeals		47-2401—47-2412
Board of Cosmetology, appeal from taken to commissioners		2-1305	Veterinarians, revocation or suspension of license, appeal to Court of Appeals		2-810
Board of Examiners in veterinary medicine, appeal from to commissioners		2-806	APPLES		
			Standard box, dimensions		10-115



APPORTIONMENT		Sec.	APPROPRIATIONS—Continued		Sec.
Closed streets and ways among abutting owners		7-124	Institutions supported by, visitorial powers of		
Excess or deficiency in number of feet in plats of lots		1-624	Board of Public Welfare		3-111
APPRAISAL			Meridian Hill Park		8-112
Decedent's estates		18-402	Montrose Park		8-113
Land for District uses		16-606	Park lands, acquisition		8-106
Property levied upon in execution		15-214	Permanent appropriations continued		47-110
APPRENTICES			Permanent appropriations repealed or abolished		47-108, 47-109
See CHILD LABOR; COSMETOLOGISTS; LABOR			Playground employees, payment of salaries		47-133
Barbers, registration, eligibility requirements	2-1105		Police and fire department meritorious service medals		4-704
Board of Public Welfare, apprenticing of wards		3-117	Police and Firemen's Relief Fund		4-503
Complaints on treatment		36-106	Police and firemen's retirement allowance, apportionment		4-516
Concealing and harboring, liability		36-109	Police department uniforms		4-131
Contracts of apprenticeship		36-105	Public contracts, condition precedent		1-808
Assignment of		36-108	Sectarian institutions, policy of government	32-1008	
Form		36-110	Smoke Prevention Law, enforcement		6-804
Terms		36-105	Street improvements, contract in excess of appropriations prohibited		7-620
Cosmetologists, limitation on number in beauty shop		2-1314	Takoma Park branch library		37-108
Cosmetology		2-1301	White House police force		4-306
Jurisdiction of probate court		36-102	Working capital for workhouse and reformatory		47-131
Maximum term of apprenticeship		36-104	Zoning Commission, budget estimate, salaries and expenses		5-426
Payment of money		36-111	AQUEDUCT BRIDGE		
Protection by probate court		36-103	Exception from control by Commissioners		7-501
Removal from District prohibited		36-107	ARBITRATION		
Who may bind		36-101	See REFERENCE OF QUESTIONS OF LAW AND FACT		
APPROPRIATIONS			Federal law applicable to District, reference		28-2803 note
Alley dwellings, slum-clearance projects		5-105	Municipal Court, small claims and conciliation branch		11-804
Alleys or minor streets, condemnation proceedings			Probate Court		11-520
Damages exceeding benefits		7-324	Award conclusive		11-520
Failure, payment of costs		7-331	Consent of parties		11-520
Annual lump-sum appropriation by federal government to District		47-134	ARCHBOLD PARKWAY		
Apportionment for contingent and miscellaneous expenses		47-106, 47-107	Acceptance of dedication authorized		8-102 note
Budget estimates in general		47-201—47-212	ARCHITECT OF CAPITOL		
Building lines, establishment		5-206	Zoning Commission member		5-412
Charitable and reformatory institutions, lien on property		32-1003	ARCHITECTS		
Civil officers or employees, payment of compensation		1-310	Act performed under prior law, saving clause		2-1031
Authorization for employment required		1-310	Alley-dwelling and slum-clearance projects		5-105
Paid only for services rendered		1-310	Applicants for registration, qualifications		2-1020
Unexpended balances, reversion to Treasury		1-310	Board of Examiners and Registrars		2-1001—2-1009
Commissioners settling claims against District		1-904	Annual report to Commissioner, content		2-1010
Court of Appeals expenses, reimbursement of United States, percentage		11-210	Appointment		2-1001
District Court expenses, reimbursement of United States, percentage		11-331	Books and papers, power to compel production		2-1029
Eminent domain proceedings, land for streets, payment of costs and damages		7-220	By-laws governing meetings and organizations, power to adopt		2-1006
Eminent domain, streets through unsubdivided part of plot		7-217	Clerical assistance, right to employ		2-1008
Exceeding prohibited		47-105	Compensation, maximum amount		2-1012
Fire department for clothing		4-406	Disobedient witnesses, punishment for contempt		2-1029
Insanitary buildings, enforcement of act concerning		5-615	Duty to enforce law		2-1009
			Expenditure of funds		2-1011
			Expense of enforcing law, payment		2-1009
			Meetings		2-1006
			Number of members		2-1001



**ARCHITECTS—Continued****Board of Examiners and Registrars—Con.**

Oath of office	2-1004
President	2-1005
Qualifications of members	2-1002
Quorum	2-1007
Record of proceeding	2-1008, 2-1024
Reimbursement for expenses	2-1013
Rules and regulations, power to adopt	2-1001, 2-1006
Secretary	2-1005
Term of office	2-1003
Three votes in accord required to adopt proposals	2-1007
Treasurer	2-1005
Vacancy filled for unexpired term	2-1003
Witnesses, power to call and examine	2-1029
"Building" defined	2-1018
Certificate of qualification	2-1014, 2-1015
Duty to obtain	2-1014
Holder entitled to use title of architect	2-1015, 2-1016
Partnership	2-1016
Practicing architect, affidavit	2-1016
Certificate of registration	
Annual renewal	2-1025
Failure to renew, affect	2-1025
Record kept	2-1024
Certificate of renewal, expiration date	2-1025
Clerks of work, right to employ	2-1017
Corporations	
Cancelation of certificate, grounds	2-1027
Certificate of registration	2-1016
Draftsmen, right to employ	2-1017
Engineers, right to make plans and specification, signing required	2-1017
Examination for certificate of registration	2-1020—2-1022
Acceptance of evidence of qualification in lieu of examination	2-1021
Examination and other papers preserved	2-1024
Practical examination, architects with ten years experience	2-1022
Proof of qualifications to practice	2-1020, 2-1021
Exemption from Registration Law	2-1026
Applicants for registration pending acceptance	2-1026
Architects employed by United States or District of Columbia	2-1026
Fees under Registration Law	2-1023
Application for certificate filed	2-1023
Board's power to fix	2-1023
Maximum fee in case certificate granted	2-1023
Paid to treasurer of Board of Examiners	2-1011
Purposes for which used	2-1011
Renewal of certificate, maximum amount	2-1023
Restoration of expired certificate, maximum amount	2-1023
Mechanics, right to make plans and specifications, signing required	2-1017
Minimum age	2-1020
Municipal architect	1-306
Name of regulatory act	2-1031

Sec.

**ARCHITECTS—Continued**

Sec.

Penalty, unregistered architects using title	2-1030
Practicing architects, right to continue practice after enactment of laws	2-1019
Register, contents	2-1024
Registration without examination	2-1019, 2-1021
Graduation from architectural college	2-1021
Practical experience required	2-1021, 2-1022
Practicing architect, evidence of qualifications required	2-1019
Practitioners from other states, reciprocity	2-1021
Revocation of certificate	2-1027, 2-1029
Appeal to Court of Appeals	2-1028
Grounds for revocation	2-1027
Hearing	2-1028
Notice required	2-1027
Power to compel attendance of witnesses and production of documents	2-1029
Procedure	2-1028
Report of findings of board filed with Commissioners	2-1028
Written charges filed	2-1028
Right to use title restricted	2-1016
Roster of registered architects	2-1010
Annual publication	2-1010
Students, right to employ	2-1017
Superintendents of construction, right to employ	2-1017

**ARLINGTON COUNTY SANITARY DISTRICT**

Contract for District water diversion	43-1531
---------------------------------------	---------

**ARLINGTON COUNTY, VIRGINIA**

Garbage incinerators of District, use, terms, and conditions	6-511
--	-------

**ARMED FORCES**See **MILITIA****ARMY****Chief of Engineers**

Member of National Capital Park and Planning Commission	8-101
Washington Aqueduct, authorizing use as playground	8-130
Children of officers and men stationed outside District, admission to schools without tuition	31-305

**ARMY RELIEF ASSOCIATIONS**

Exemption from insurance company taxes	47-1808
--	---------

**ARRAY**

Challenge to, civil cases, right preserved, United States District Court	11-319
--	--------

**ARREST**

Bribe, accepting from person subject to arrest, penalty	4-175
Cruelty to animals, arrest without warrant	22-804
Disturbing religious meeting, power of church authorities to make arrest	22-1114
Police department members, civil arrest, exemption	4-128
Policeman making	4-138, 4-140—4-143
Felony suspected, right of entry	4-141
Making without warrant, circumstances authorizing	4-140



<b>ARREST—Continued</b>	<b>Sec.</b>	<b>ASSESSMENT</b>	<b>Sec.</b>
Policeman making—Continued		See ASSESSOR; TAXATION AND FISCAL AFFAIRS	
Neglect to make arrest, penalty	4-143	Collection and disbursement	47-301—47-311
Notice given lieutenant, time limit	4-142	Designation of property for	47-401—47-408
Warrants for, execution	4-138	Expenses to be included in budget estimates	47-209
Written return by lieutenant, time limit	4-142	Motor vehicles	47-1210
Sergeant at Arms, House and Senate	9-105	Personal property	47-1201—47-1214
Superintendent of Weights and Measures and his assistants, powers of arrest	10-126	Real property	47-701—47-723
Unnecessary force in making, assault and battery	4-176	Service sewers	43-1510—43-1515
Warrants for, execution by police	4-138	Special assessments	47-1101—47-1107
		Statement of total assessment and total taxes	47-601
<b>ARSENIC</b>		Water-mains	43-1510—43-1515
Sale, restrictions	2-612	<b>ASSESSMENT OF BENEFITS</b>	
<b>ARSON</b>		See EMINENT DOMAIN; STREETS AND OTHER WAYS	
Burning another's movable property, penalty	22-403	Refunds by Commissioners of District	1-903
Burning fences, woods, crops, penalty	22-404	<b>ASSESSOR</b>	
Burning own property with intent to defraud, penalty	22-402	See ASSESSMENT; TAXATION AND FISCAL AFFAIRS	
Definition	22-401	Administering oaths	47-606
Killing while perpetrating, murder in first degree	22-2401	Annual tabulated report of property assessed, return	47-706
Penalty	22-401	Annual tax ledgers, duty to prepare	47-601
Properties subject	22-401	Board of assistant assessors	47-604
		Assigning members	47-605
<b>ART</b>		Deposit of maps, books, surveys, and plats	47-704
Corporations for the promotion of art	29-601	Bond	47-602
<b>ARTISANS</b>		Certifying taxes and assessments due	47-306
Liens	38-124—38-126	Effect on person liable when tax was assessed	47-306
<b>ASHES</b>		Effect on subsequent purchaser	47-306
Accumulation prohibited	6-801	Fee	47-306
Contracts for collection and disposal	6-502	Certifying want of information for prepara- tion of personal property tax return	47-1209
Placing on icy sidewalk	7-802, 7-804	Chairman of Board of Assistant Assessors	47-605
<b>ASPHALT</b>		Chairman of Board of Equalization and Review	47-605
Inspector, restriction on rendering of services to others	1-307	Chairman of Board of Personal Tax Appeals	47-605
<b>ASPHALT PLANT</b>		Chairman of Real Estate Commission	45-1403
Acquisition by municipality authorized	7-618	Competency as witness in condemnation suits	14-309
Portable plant, use in improving streets au- thorized	7-618	Designation of property for assessment and taxation, duties	47-401—47-408
<b>ASSAULT</b>		Determines inheritance and estate taxes	47-1618
Duelling, assault for refusal to accept chal- lenge	22-1103	Directing assessment of personal property	47-1201
Gaming transactions, on account of money won by	16-705	Duties regarding estate tax	47-1608—47-1629
Jurisdiction of Police Court	11-605	Duties regarding inheritance tax	47-1601—47-1607, 47-1616—47-1629
On police officer	22-505	Duty to obtain income tax returns	47-1517
Resulting from gambling	16-705	Estate tax, duties	47-1608—47-1629
Threatening	22-504	Family dwellings occupied by owner	47-901, 47-905
Bodily harm	22-507	Affidavits of domicile and ownership, pre- paring	47-905
With dangerous weapon, penalty	22-502	Sending statement of taxes	47-901
With intent to commit felony	22-503	Furnishing income tax return blanks	47-1517
With intent to commit mayhem, penalty	22-502	Furnishing information on taxes, special as- sessments and valuations	47-1009
With intent to kill, rob, rape, poison, penalty	22-501	Income tax, duties regarding	47-1501—47-1543
<b>ASSAULT AND BATTERY</b>		Inheritance tax, duties	47-1601—47-1607, 47-1616—47-1629
Police, unnecessary force in making arrest	4-176	Keeping records and accounts relating to taxation	47-603
<b>ASSEMBLAGES</b>			
Capitol grounds	9-110, 9-111		
Unlawful, penalty	22-1107		



ASSESSOR—Continued		Sec.	ASSIGNEES		Sec.
Maps, books, surveys, and plats to be deposited with	47-704		Suits to vacate fraudulent conveyances	12-403	
Militia, listing persons liable to enrolment	39-103		ASSIGNMENTS		
Motor fuel importers			Attachment and garnishment of fraudulent assignments	16-326	
Inspecting records of	47-1907		Choses in action	28-2501—28-2504	
Issuing license to	47-1903		Contracts of apprenticeship	36-108	
Personal property, assessment of	47-1201		Dower, assignment in partition	16-1302	
Personal property tax accounts preparation	47-603		General assignments of choses in action	28-2504	
Preparation of tax accounts, date for	47-603		Set-off of assignment	16-1904	
Preparing affidavit of domicile and ownership on family dwellings	47-905		ASSIGNMENTS FOR BENEFIT OF CREDITORS		
Preparing and keeping list of property sold for taxes	47-1010		Acknowledgment of assignment	28-2602	
Preparing personal property schedule blanks	47-1203		Assignee	28-2602	
Preparing real property delinquent tax list	47-1001		Assent in writing required	28-2602	
Preserving income tax returns	47-1522		Bond	28-2603	
Property sold for taxes, preparation of list	47-603		Bond and undertaking, in District Court	28-2603	
Property taxes in arrears on July 1, preparation of list	47-603		Corporate income tax returns	47-1516	
Real property tax accounts, preparation	47-603		Duties	28-2605	
Records and accounts	47-603		Collection of assignor's assets	28-2605	
Keeping in assessor's office	47-603		Conversion of assets into money	28-2605	
Pertaining to bookkeeping, accounting, and collection of taxes	47-603		Distribution to creditors	28-2605	
Release of liens for inheritance or estate taxes	47-1623		Inventory	28-2605	
Requiring inventories for income tax return	47-1514		Settling accounts	28-2605	
Revoking motor fuel importer's license	47-1903		Failure to comply with requirements	28-2604	
Sending tax statement for family dwellings	47-901		Must be resident of District	28-2602	
Service sewers	43-1510—43-1515		Removal	28-2604	
Special taxes, preparation of bills for	47-603		Resignation	28-2604	
Statement of total assessment and total taxes	47-601		Vested of all except exempt property	28-2601	
Tax accounts	47-603		Assignments to defraud creditors	28-2608	
Contents	47-603		Assignments to delay creditors	28-2608	
Dates for preparation	47-603		Assignments to hinder creditors	28-2608	
Personal property	47-603		Creditors to receive notice	28-2609	
Real property	47-603		Distribution to be pro rata	28-2606	
To prepare and retain	47-603		Duties of assignee	28-2605	
Tax bills, preparation	47-601, 47-603		Examination of assignor	28-2605	
Water mains	43-1510—43-1515		Exclusion of exempt property	28-2610	
ASSETS			Inventory of estate	28-2601	
Appraisal, decedents' estates	18-402		Annexation to assignment required	28-2601	
Decedents' estates	18-301		Content	28-2601	
Inventory, decedents' estates	18-401		Not conclusive of amount of debtor's estate	28-2601	
ASSIGNATION			List of creditors	28-2601	
See HOUSES OF PROSTITUTION; LEWDNESS; PANDERING; PROSTITUTION			Annexation to assignment required	28-2601	
Penalty for arranging	22-2707		Contents	28-2601	
Premises occupied for	22-2713—22-2722		Notices to creditors	28-2609	
Bawdy house, keeping	22-2722		Preferences in assignment to be void	28-2606	
Disorderly house, keeping	22-2722		Recording of assignment	28-2602	
Nuisance	22-2713—22-2721		Recorded in land records	28-2602	
Abatement of	22-2713—22-2719		Time limit after execution	28-2602	
Bond for abatement	22-2719		Suits by creditors to be representative	28-2607	
Costs in action to abate	22-2715		Trustee to replace assignee	28-2604	
Declared such	22-2713		ASSISTANT SUPERINTENDENT OF MACHINERY, FIRE DEPARTMENT		
Delivery of premises, order for	22-2719		Salary	4-405	
Injunction	22-2714, 22-2717		ASSISTANT SUPERINTENDENTS		
Order for abatement	22-2717		See POLICE DEPARTMENT		
Sale of property	22-2717, 22-2718		ASSISTANT SURVEYOR		
Tax for maintaining	22-2720		See SURVEYORS		
Witnesses, granting immunity to	22-2721		ASSOCIATE JUSTICES		
			United States Court of Appeals	11-201	
			United States District Court	11-301	
			Salaries	11-302	



<b>ASSOCIATION FOR WORKS OF MERCY</b>	Sec.	<b>ATTACHMENT AND GARNISHMENT—Con.</b>	Sec.
Appointment as guardian by Probate Court	32-103	Joint credits	16-333
Commitment to of girls under 18 convicted of crime	32-102	Judgment against garnishee	16-319
Custody and control of girls under 18	32-101	Decrease by attorney's fee	16-323
Approval by Probate Court judge required	32-101	Default of garnishee	16-323
Obtaining	32-101	Execution in undertaking	16-324
Custody and discharge of inmates	32-103	In bar to action by defendant	16-325
		Satisfaction by delivery of property	16-324
<b>ASSOCIATIONS</b>		Judgment of condemnation of attached property	16-320
Inheritance tax rates on transfers to	47-1601	Levy on credits	16-312
<b>ASSUMED NAME</b>		Retention by garnishee	16-312
Dentistry		Service on garnishee	16-312
Penalty for practicing under false name	2-320	Service on partner	16-312
Unprofessional conduct	2-311	Levy on judgment or decree	16-313
Use in practicing prohibited, penalty	2-316	Levy on money, property, in hands of executor, administrator	16-313
Podiatry practitioners		Levy on money, property in hands of marshal, coroner	16-313
Practicing under false name, penalty	2-715	Levy on personal chattels	16-310
Unprofessional conduct	2-707	Possession and custody	16-310
Signature to negotiable instrument, liability	28-119	Taking of undertaking of defendant, form	16-310
<b>ATHLETIC EXHIBITIONS</b>		Taking of undertaking of garnishee, form	16-310
Grounds for, license	47-2323	Levy on real property	16-309
<b>ATHLETICS</b>		Indorsement of attachment, form	16-309
See <b>BOXING EXHIBITIONS</b>		Service of indorsed copy and notice	16-309
<b>ATTACHMENT AND GARNISHMENT</b>		Municipal Court	11-733, 11-744—11-747
Additional attachments	16-304	Notice	16-302
Affidavit	16-301	Personal service	16-302
Filing	16-301	Publication, form	16-302
Traversing	16-307	Oral examination of garnishee	16-303
Appointment of receivers	16-314	Orders of Probate Court, enforcement by attachment	11-512
Attachment before judgment	16-301	Person of defendant in equity cases to enforce decree	11-326
Bill in equity not excluded	16-332	Pleas by garnishee	16-315
Bond	16-301	Probate Court	11-510
Amount	16-301	Proceedings supplementary to execution	15-301
Sufficiency	16-305	Proceeds of sale	16-322
Claimant to attached property	16-318	Property subject, liens	16-308
Right to petition	16-318	Preservation of attached property	16-314
Right to trial	16-318	Quashing	16-307
Code on attachments applies to Municipal Court	16-335	Release from attachment	16-311
Debts not due	16-306	Judgment after release	16-311
Docket for real property attachments	16-334	Undertaking	16-311
Exemptions	15-401	Release of garnishee	16-319
Fraudulent assignments	16-326	Replevin actions	16-321
Garnishee as bona fide purchaser	16-328	Sale of condemned property	16-322
Issue	16-328	Sale of perishables	16-314
Judgment for garnishee, attorney's fees	16-329	Traverse of garnishee's answers	16-317
Judgment for plaintiff, condemnation	16-330	Costs and counsel fee	16-317
Trial	16-328	Trial	16-317
Garnishee may traverse affidavits	16-327	Trial by jury	16-316
Goods in warehouse	28-1919	Trial of issues on pleas to attachment	16-331
Negotiable receipts outstanding	28-1919	Warehouse receipts by creditors	28-1920
Transferred nonnegotiable receipts outstanding	28-2006	Who may defend	16-316
Grounds	16-301	<b>ATTEMPT</b>	
Actions of defendant	16-301	Arson, attempt to commit, penalty	22-401
Breach of contract	16-301	Robbery, attempt to commit	22-2902
Debt	16-301	To commit crime, penalty	22-103
Recovery of specific personal property	16-301	<b>ATTESTATION</b>	
Status of defendant	16-301	Police Court process	11-613
Interrogatories to garnishee	16-303		
Issues	16-316		



ATTORNEY GENERAL		Sec.	ATTORNTMENT		Sec.
See PRISONS AND PRISONERS			See LANDLORD AND TENANT		
Park lands, clearing title, approval of settle-			Fraudulent		45-934
ment		8-104	Unnecessary		45-933
Quo warranto, proceedings		16-1602, 16-1603	AUCTIONEERS		
Refusal to institute		16-1603	Embezzlement		22-1208
Right to institute		16-1602	License		47-2309
United States District Court Building, con-			Approval by major and superintendent of		
trol over		11-329	police		47-2309
ATTORNEYS			Fee		47-2309
See POWER OF ATTORNEY			Watches and jewelry, Police Department,		
Acknowledgment, deeds of conveyance, invalid		45-401	powers and duties		4-147, 4-148, 4-150
Admission to bar		11-312, 11-1301, 11-1302	Examination of books and premises		4-148
General term of District Court		11-312	Penalty for interfering with officer		4-150
Revocation		11-1302	Supervision and inspection		4-147
Rules governing, power of District Court			AUCTIONS		
to adopt		11-1301	See SALES, UNIFORM ACT		
Appointment to represent infant defendants		13-105	Conduct without permit, when prohibited		47-2201
Censure, general term of District Court		11-312, 11-1302	Gold and silver ware or plated ware, sale at		
Disbarment by general term of District			night prohibited		47-2205
Court		11-312, 11-1302	Hours when sale of jewelry or plated ware is		
Authority		11-312	prohibited		47-2205
Grounds		11-1302	Jewelry, sale at night prohibited		47-2205
Disbarment, conviction of crime		11-1303	Night sale of certain articles prohibited		47-2205
Appeal, effect of reversal		11-1303	Permits for public auctions		47-2201, 47-2208
Appeal, suspension pending		11-1303	Acquittal on permit law charge lifts sus-		
Modifying		11-1303	pension		47-2204
Procedure		11-1303	Application for permit, contents		47-2202
Vacating		11-1303	Commissioners of District to issue		47-2201
Divorce			Construction of permit law		47-2208
Discretionary assignment in		16-418	False advertising law not affected		47-2208
Pendency of action, suit money		16-410	Prosecutions for fraud, deceit or lar-		
Uncontested cases, appointment for de-			ceny by trick not prevented		47-2208
fendant, compensation		16-418	Remedies at law and in equity not		
Embezzlement by, definition, penalty		22-1202, 22-1203	estopped		47-2208
Expulsion, by District Court		11-312, 11-1302	Taxation not affected		47-2208
Fees and costs		11-1501	Conviction of violating permit law voids		
Agreements with clients not prohibited		11-1501	permit		47-2204
Note provided for, negotiability		23-103	Grounds for denial		47-2201
Taxed as costs, when		11-1501	Maximum period		47-2202
Unemployment compensation cases, lim-		46-318	Permit fee		47-2202
Funds of estate, receipt from fiduciary, re-			Property salable without permit at		
lease of bond		28-2407	owner's residence		47-2203
Injunction or restraining order bond, action			Suspension for violation of permit		
on, recovery of fees		28-2404	law		47-2204
Jury service, exemption from		11-1420	Property clerk, unclaimed property		4-160, 4-161
Notaries public, right to act as		1-501	Property salable without permit at owner's		
Not to be given information on proposed police			residence		47-2203
raids		23-609	Automobiles		47-2203
Oath		11-1301	Livestock and game		47-2203
Paying court attachés to secure clients pro-			Mechanics' tools		47-2203
hibited		23-604	Poultry		47-2203
Paying professional bondsmen to secure			Used farming implements		47-2203
clients prohibited		23-604	Used household furniture and effects		47-2203
Receiving pay from professional bondsmen			Vegetables, fruits, melons, berries,		
prohibited		23-603	flowers		47-2203
Register of wills not to practice law		19-410	Wagons and carriages		47-2203
Revocation of admission		11-1302	Prosecution for misrepresentations		47-2206
Suspension by general term of District			Representations to be considered warranties,		
Court		11-312, 11-1302	breach is punishable		47-2206
			Sales under authority of law, exemption from		
			permit law		47-2201
			Statuary, bric-a-brac, sales at night pro-		
			hibited		47-2205



<b>AUCTIONS—Continued</b>		<b>Sec.</b>	<b>BAD CHECKS</b>	<b>Sec.</b>
Violations of permit law		47-2207	Issuing checks, insufficient funds in bank	22-1410
Penalty		47-2207		
Prosecutions in police court		47-2207		
<b>AUDITOR OF DISTRICT</b>			<b>BAGGAGE</b>	
Auditing all accounts, exceptions		47-123	Hotel keeper's liability for stolen baggage	34-102
Bond		47-120	Hotels and lodging houses, defrauding by removal of baggage	22-1301
Chief clerk of auditor's office		47-122	Lien of hotels, restaurants, and lodging houses	34-103
Bond		47-122	Enforcement of lien	34-104, 34-105
Duties		47-122		
Countersigning checks		47-121	<b>BAIL</b>	
Disbursement vouchers, auditing		47-309	Forfeiture, powers of Police Court	11-607
Disbursing officer's accounts to be audited		47-112	Habeas corpus proceedings	16-806
Duties		47-120	Police Court	11-602
Juvenile Court, audit of accounts		11-940		
"Miscellaneous trust-fund deposits," auditing		47-311	<b>BAILIFFS</b>	
Nurses' Examining Board, audit of accounts		2-408	Police Court	11-623
"Outstanding liabilities" account, claims against		47-125		
Police Court clerk, audit of accounts		11-627	<b>BAKERIES</b>	
Real Estate Commission annual audit		45-1403	License	47-2327
Separate accounts of deposits and payments of "Miscellaneous trust-fund deposits"		47-311		
<b>AUDITORS</b>			<b>BALLOONS</b>	
See ACCOUNTS AND ACCOUNTING			Flying, penalty	22-1117
District Court, appointment for, at general term		11-312		
Reference to of actions on account		16-102	<b>BALLS</b>	
Report		16-102—16-105	Ballroom, buildings for, licenses	47-2320
<b>AUTHORITY</b>				
See ALLEY DWELLINGS			<b>BALTIMORE AND OHIO RAILROAD COMPANY</b>	
<b>AUTOMATIC VENDING DEVICES</b>			Acquisition of land for track	7-1212
Placard on machine, contents		10-109	Assessment of real property	47-718, 47-719
Regulations and requirements concerning use		10-109	Construction of sidings and switches authorized	7-1212
Required to be in perfect working order		10-109	Elevation of tracks	7-1212
<b>AUTOMOBILES</b>			Grade crossings	
See MOTOR VEHICLES			Creation prohibited	7-1212
Inspection		40-201—40-207	Establishment prohibited	7-1212
Liens		40-701—40-715	Terminal station	
Operators' permits		40-301—40-303	Construction authorized	7-1212
Owners' financial responsibility act		40-401—40-416	Right to establish and maintain	7-1212
Public-owned vehicles		40-501—40-504		
Registration		40-101—40-105	<b>BALTIMORE AND POTOMAC RAILROAD COMPANY</b>	
Rental agency, license		47-2332	Assessment of real property	47-720
Traffic regulations		40-601—40-617	Property-owners applying for construction of branch tracks or sidings	7-1211
<b>AVENUE OF THE PRESIDENTS</b>			Sidings and switches	
Sixteenth Street Northwest, name changed		7-107 note	Authority to construct	7-1210, 7-1211
<b>AVENUES</b>			Commissioners granting permission to construct	7-1210
See STREETS AND OTHER WAYS			Permission to lay	7-1210, 7-1211
<b>AVIATION</b>			<b>BANKRUPTCY</b>	
Federal laws applicable to District, reference		p. 680	Acceptor of bill of exchange insolvent	28-934
<b>AWARDS</b>			Protest for better security	28-934
See EMINENT DOMAIN			Drawee of bill of exchange bankrupt, presentment	28-921
Referee making, on questions of law and fact		16-1705	Notice of dishonor of negotiable instruments	28-713
<b>BACTERIOLOGY</b>			Trustees	
Dentist, examination for license		2-308	Corporate income tax returns	47-1516
Healing arts, examination of applicants for license		2-108	<b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>	
Podiatry license examinations		2-705	See BUILDING ASSOCIATIONS; CREDIT UNIONS; PETTY LOANS	
			Adverse claims to deposits	26-203
			Fiduciaries of claimants	26-203
			Indemnifying bond	26-203



BANKS AND OTHER FINANCIAL INSTITUTIONS—Continued	Sec.	BANKS AND OTHER FINANCIAL INSTITUTIONS—Continued	Sec.
Adverse claims to deposits—Continued		Negotiable instruments payable at bank, right	
Notice effectual	26-203	to charge to account of principal debtor	28-618
Restraining order or injunction	26-203	Non-payment of check in error, liability	28-1009
"Bank" defined, Negotiable Instrument Law	28-101	Notaries public	26-110
Building associations	26-401—26-416	Payment of trust accounts on death of trustee	26-204
Cashier made payee of instrument	28-313	Penalties	26-103
Bank's right to indorse	28-313	Petty loans	26-601—26-611
Checks		Private banks	
Liability for nonpayment in error	28-1009	Definition	47-1706
Liability of bank	28-1007	Taxation	47-1706
Refusal to pay after one year	28-1004	Provisions of United States Codes not applying	26-104
Consent of Comptroller of Currency	26-103	Restriction on use of "bank," "trust company," penalty	26-107
Credit Unions	26-501—26-518	Restrictions on Federal Reserve members extended to non-members	26-109
Dissolution of solvent institutions	26-103	Safety deposit boxes	26-202
"Entered into or incurred" defined	26-104	Savings banks, savings companies, trust companies	26-101
Establishment of branch banks	26-103	Application of certain sections of United States Code	26-101
Excise and license taxes	47-1701—47-1709	Dividends, payment and restrictions	26-106
National and incorporated banks	47-1701	Examination by Comptroller of Currency	26-102
Private banks	47-1706, 47-1709	Excise tax, savings bank	47-1703
Savings banks	47-1703	Excise tax, trust companies	47-1701
Exempted institutions	26-103	Reserves	26-102
False statements against, penalty, defense	26-108	Subject to supervision of Comptroller of Currency	26-101
Federal Home Loan Bank shares	26-415	Small loans	26-601—26-611
Fiduciaries making deposits	28-2307—28-2310	Suspected private banking-houses, Police Departments, supervisory powers	4-147, 4-148, 4-150
Deposits in fiduciary's personal account, checks, liabilities	28-2309	Trust, title and indemnity companies	26-301—26-336
Deposits in name of principal, checks, liabilities	28-2308	Annual reports to Comptroller of Currency	26-318
Deposits in name of two or more trustees, checks, liability	28-2310	Appointment as trustee, fiduciary	26-310
Fiduciary depositing as such, checks on accounts, liabilities of parties	28-2307	By-laws	26-326
Home Owners Loan Corporation bonds	26-415	Capital stock	26-316
Homestead associations	26-401	As personal property of holder	26-321
Income tax, when exempted	47-1502	Calls and sale on failure to pay call	26-317
Institutions subject to chapter	26-103	Deposited with Comptroller of Currency	26-316
Joint accounts	26-201	Face to show par value, amount paid	26-321
Deposits	26-201	Increase or decrease	26-331
Liabilities of institution	26-201	Money payment required, exception	26-323
Payment	26-201	Par value of shares	26-317
Safety deposit boxes	26-202	Transfer	26-321
Liability of institution	26-202	Certificate from Comptroller of Currency	26-307
Right of access	26-202	Certificate of incorporation as evidence	26-332
Shares of stock	26-201	Charter to be recorded	26-307
Liability of bank		Compliance by firms organized under state laws	26-335
Altered checks	28-1008	Directors or trustees	26-324
Forged checks	28-1008	Duration of charters	26-315
Nonpayment of check in error	28-1009	Grant or refusal of charter	26-305
Raised check	28-1008	Liability as trustee	26-309
Liability of forwarding bank where payor bank		Liability of directors or trustees, exceptions	26-319
fails to account	28-1010	Liability of fiduciaries holding stock	26-330
Liability of stockholders	26-104	Liability of stockholders	26-322
On new stock issues	26-104	Liability when liabilities exceed assets	26-329
Stockholders on March 4, 1933	26-104	Liability where dividends render insolvent	26-327
Additional liabilities terminated, conditions	26-105	Misappropriation of funds as larceny	26-320
Individual, equally and ratably	26-104		
Loan Shark Law	26-601—26-611		
Money lending	26-601—26-611		
Mortgage loan companies	26-301		
Mutual savings banks			
Excise tax	47-1703		



BANKS AND OTHER FINANCIAL INSTITUTIONS—Continued	Sec.	BARBERS—Continued	Sec.
Trust, title and indemnity companies—Con.		Board of examiners—Continued	
Notice of intention to apply for charter,		Rules and regulations, power to adopt	2-1103
publication	26-306	Secretary-treasurer	2-1103
Oath as fiduciary, by whom made	26-311	Surplus funds, payment into United	
Objection to irregular dividends	26-328	States Treasury	2-1112
Officers, bonds	26-325	Term of office	2-1103
Organization	26-301	Vacancies, filling for unexpired term	2-1103
Organization certificate, content	26-304	Vice president	2-1103
Perjury	26-320	Certificates of registration	
Powers, general	26-309	2-1104, 2-1105, 2-1108, 2-1110, 2-1113	
Powers of Comptroller of Currency	26-308	Annual renewal	2-1109
Examination and visitation	26-308	Apprentices	2-1105
Taking possession of companies	26-308	Barber school or college, requirement	2-1113
Preexisting concerns	26-313	Display required	2-1108
Purposes	26-301	Eligibility requirements	2-1104
Safe deposit, trust, loan, and mortgage		Refusal, ground	2-1110
business	26-301	Constitutionality of Registration Act, separa-	
Security, guarantee, indemnity, loan,		bility of provision	2-1116
and mortgage business	26-301	Definitions of terms used	2-1102
Title insurance, loan, and mortgage		Drug addicts, refusal of registration certifi-	
business	26-301	cate	2-1110
Realty which may be owned	26-314	Drunkards, refusal of registration certificate	2-1110
Reports to Comptroller of Currency	26-308	Examinations for certificate	2-1106, 2-1107, 2-1112
Right to amend or repeal law reserved by		Apprentices	2-1106
Congress	26-336	Exceptions from act	2-1107
Security as fiduciary	26-333	Quarters for holding	2-1112
Bond unnecessary	26-333	Registered barber	2-1106
Court may require bond	26-334	Exemptions from act	2-1107, 2-1115
Stock and property security, as fiduciary	26-312	Cosmeticians	2-1115
Storage business, requirement	26-301	Physicians and surgeons and other heal-	
Title companies may become perpetual	26-302	ing arts practitioners	2-1115
Trust companies to have perpetual succes-		Practicing barbers, conditions	2-1107
sion	26-303	Registered nurses	2-1115
Washington Stock Exchange, taxation	47-1707	Undertakers and embalmers	2-1115
BARBED-WIRE FENCES		Fees under Registration Law	2-1111
Construction or maintenance along streets or		Barber schools and colleges	2-1111
ways		Issuance, renewal, or restoration of cer-	
Outside fire limit, permit	7-1102	tificate	2-1111
Within fire limit prohibited	7-1101	Refund	2-1111
Notice to remove	7-1103, 7-1105	Health certificate	2-1104, 2-1107
Publication of notice, when required	7-1105	Inspectors	2-1112
Removal by owner after notice	7-1103	Competitive examination for appoint-	
Service	7-1103	ment	2-1112
Penalty for violating law	7-1104	Number appointed	2-1112
Removal by Building Inspector	7-1105	Qualifications	2-1112
Assessment of costs against property	7-1105	Name of act	2-1101
BARBERS		Purpose of act	2-1118
Barber colleges, course of study and other		Refusal to issue or renew certificate	2-1110
requirements	2-1113	Appeal to United States District Court	2-1110
Board of Examiners	2-1103	Ground	2-1110
Annual report to Commissioners	2-1103	Registered apprentices	2-1105
Appointment	2-1103	Eligibility requirements	2-1105
Clerks, power to appoint	2-1112	Health certificate	2-1105
Expenses, payment	2-1112	Registered barbers, eligibility requirement	2-1104
Inspector, power to appoint, qualifica-		Repeal of inconsistent laws	2-1117
tions	2-1112	Revocation of certificate, grounds, appeal	2-1110
Nominations for membership	2-1103	Secretary-treasurer of board, duties	2-1103
Number of members	2-1103	Unlawful practices enumerated, penalty	2-1114
Per diem	2-1112	BARBER SHOPS	
President	2-1103	License	47-2310
Qualifications	2-1103	BARGAIN AND SELL	
Removal of members, grounds	2-1103	"Bargain and sell" in conveyance passes whole	
		estate in absence of contrary showing	45-202



<b>BARIUM</b>	Sec.	<b>BATHING POOLS AND BEACHES</b>	Sec.
Poisonous compounds, sale, restrictions	2-612	Bathing beach and dressing-room, tidal reservoir	8-168
<b>BARRELS</b>		Construction authorized	8-169
Cranberries, standard barrel, dimensions	10-115	Cost of construction limited	8-169
Specifications, power of commissioners of District to establish	10-127	Fee for use and enjoyment	8-170
Standard size for fruits, vegetables, and dry commodities	10-115	Management and control	8-170
Use of other than standard containers prohibited	10-116	Number authorized	8-169
		Operation through welfare and recreational association, special fund	8-171
<b>BASEBALL</b>		<b>BATHS</b>	
Grounds for, license	47-2323	Medicated	47-2311
<b>BASIC SCIENCES</b>		Public bath houses	47-2312
See <b>HEALING ARTS PRACTICE ACT</b>		Russian	47-2311
Applicants for license, examination, subjects	2-108	Turkish	47-2311
Board of Examiners	2-106—2-108	<b>BATTALION CHIEF ENGINEERS</b>	
Certification of applicants to other boards	2-108	Fire department	4-404
Chairman of board	2-106	Salary	4-405
Educational qualifications	2-107	<b>BATTERY COVE</b>	
Examinations, power to conduct	2-106	Retrocession to Virginia	1-101 note
Federal or District officers or employees, appointment authorized	2-106	<b>BAWDY HOUSES</b>	
Number of members	2-106	See <b>ASSIGNATION; HOUSES OF PROSTITUTION; PANDERING; PROSTITUTION</b>	
Qualifications of members	2-106, 2-107	Keeping, penalty	22-2722
Reference of applicant for license to board	2-108	<b>BEACHES</b>	
Reports	2-106, 2-108	See <b>BATHING POOLS AND BEACHES</b>	
Secretary	2-106	<b>BEACH PARKWAY</b>	
Serving as teacher while on board prohibited	2-107	Dedication and transfer of exchanged lands	8-122
Subjects in which applicants for license examined	2-108	Exchange of lands between Federal Government and private property-owners	8-121, 8-122
Term of office	2-106	Extension north, purposes	8-121
Issuance of license to practice	2-108	Secretary of Interior, exchange of lands	8-121, 8-123
Reciprocity with other states	2-108	<b>BEANS</b>	
Time for holding examination	2-114	Shelled, standard container	10-115
<b>BASKETS</b>		<b>BEARER</b>	
Fruit and vegetable containers, standard sizes	10-115	Definition, Negotiable Instruments Law	28-101
Use of other than standard containers prohibited	10-116	<b>BEATTY AND HAWKINS' ADDITION</b>	
<b>BASS</b>		Inclusion in Permanent Highway Plan authorized	7-116
See <b>GAME AND FISH LAWS</b>		<b>BEAUTY SHOPS, SALONS, AND PARLORS</b>	
<b>BASTARDS</b>		See <b>COSMETOLOGISTS</b>	
Birth report, disclosure of names of parents unnecessary	6-301	License	47-2310
Inheritance from	18-107, 18-716	<b>BEDS AND BEDDING</b>	
Inheritance of real property from mother	18-107	See <b>MATTRESSES</b>	
Issue of marriage dissolved by divorce, contesting legitimacy	16-408	<b>BEER</b>	
Issue of voidable marriages declared legitimate	16-406, 16-407	See <b>ALCOHOLIC BEVERAGES</b>	
Legitimation by marriage of parents, inheritance of property	18-106	<b>BEETS</b>	
Mother's right to inherit real estate	18-107	Sale by bunch authorized	10-115
Paternity proceedings, jury trial	11-907	<b>BEGGARS</b>	
Proceedings to determine paternity and to provide for support	11-907	Capitol grounds, begging prohibited	9-108
Share in mother's estate	18-107, 18-716	<b>BELLADONNA</b>	
		Poison, sale, restrictions	2-612
		<b>BELT RAILROAD</b>	
		Construction and use of facilities by other roads	7-1216—7-1224



<b>BELT ROAD</b>	Sec.	<b>BILLS OF EXCEPTION—Continued</b>	Sec.
Closing in part authorized, consent of prop- erty-owners	7-123	Trial by jury of civil cases	11-320
<b>BENEFITS</b>		Reductions of exceptions to writing	11-320
See <b>EMINENT DOMAIN</b>		Section applicable to municipal court	11-320
<b>BENEVOLENCE</b>		<b>BILLS OF EXCHANGE</b>	
Corporations for	29-601	See <b>NEGOTIABLE INSTRUMENTS</b>	
<b>BENEVOLENT INSTITUTIONS</b>		Interest rate	28-2702
Personal property exempted from taxation	47-1208	Lost bills	28-410
<b>BENNING BRIDGE</b>		Presentment for payment, reasonable time	28-602
Construction cost, share of street railway	7-514	<b>BILLS OF REVIVOR</b>	
Lien of share of cost on property of street railway	7-514	See <b>ABATEMENT AND REVIVOR</b>	
<b>BERRIES</b>		Abatement and revivor	12-116
Standard container	10-115	<b>BILLS OF SALE</b>	
<b>BEVERAGES</b>		Recordation	42-101, 42-102
See <b>ALCOHOLIC BEVERAGES; MILK AND MILK PRODUCTS</b>		<b>BIRDS</b>	
Bottles for, registration	48-101	See <b>GAME AND FISH LAWS</b>	
Milk beverage containers, registration	48-301—48-307	<b>BIRTHS</b>	
Milk containers, registration	48-201—48-211	Acknowledgment of receipt of report	6-301
Unauthorized use of registered bottles, pen- alty	48-102	Altering or falsifying reports prohibited	6-302
<b>BICARBONATE OF SODA</b>		Contents of reports	6-301
Sale by other than pharmacist	2-601	Copies of records, fee	6-103
<b>BIDS</b>		Copies for official purposes excepted	6-103
District quarry, operation	1-811	False or fictitious transcripts of record prohib- ited	6-302
Public contracts, advertisement for bids	1-808, 1-809	False reports prohibited	6-302
Aggregate amount involved not exceeding \$100	1-808	Illegitimate children, identity of parents, dis- closure unnecessary	6-301
Printers' rates	1-809	Inspection of records	6-303
Readvertisement	1-808	Midwives, duty to report	6-301
<b>BIGAMY</b>		Name of child, reporting	6-301
Annulment of marriage	16-403	Penalties for violating law requiring reports	6-304
Definition	22-601	Each week's delay separate and distinct offense	6-304
Issue of bigamous marriage, legitimacy	16-406	Information filed by corporation counsel	6-304
Penalty	22-601	Prosecutions in police court	6-304
<b>BILL</b>		Use of reports in evidence	6-304
Definition, Negotiable Instrument Law	28-101	Physicians, duty to report	6-301
<b>BILLIARD PARLORS</b>		Reports filed with health officer	6-303
Hours when operation is prohibited	47-2321	Part of public records	6-303
License	47-2321	Publication of abstracts and analysis of data	6-303
Approval of major and superintendent of police	47-2321	Stillbirths, when unnecessary to report	6-301
Fee	47-2321	Time limit for making reports	6-301
<b>BILLS AND NOTES</b>		<b>BITTER ALMONDS</b>	
See <b>NEGOTIABLE INSTRUMENTS; NOTARIES PUBLIC; PROTEST; WAREHOUSE RECEIPTS</b>		Poison, sale, restrictions	2-612
Instruments payable on contingency, non- negotiable	28-105	<b>BITUMINOUS MACADAM</b>	
<b>BILLS OF EXCEPTION</b>		Use in improving streets and highways au- thorized	7-617
Court of Appeals	11-205	<b>BLACKMAIL</b>	
Criminal trials, United States District Court	11-322	Definition, penalty	22-2305
Sealing by justice	11-320, 11-321	<b>BLANK INDORSEMENT</b>	
Trial by court of civil cases	11-318	See <b>NEGOTIABLE INSTRUMENTS</b>	
		<b>BLANKS IN NEGOTIABLE INSTRUMENTS</b>	
		Delivery essential to render valid	28-116
		Extent of authority to complete	28-115
		Holder's right to complete	28-115
		Negotiation after completion, effect	28-115
		Undated instrument, right of holder to fill in	28-114



<b>BLASPHEMY</b>	Sec.	<b>BLIND PERSONS—Continued</b>	Sec.
Definition and penalty	22-1107	Loss of eyesight through crime or vicious habits, effect on relief	46-110
<b>BLINDNESS IN INFANTS</b>		"Needy blind person" defined	46-102
Inflammation of eyes	6-202, 6-203	Provision for education of indigent blind	31-1019
Information given health officer	6-202	Relief for	46-101
Orders by health officer for treatment	6-202	Saving clause	46-116
Penalty for violating law	6-204	Transfer of mismanaged property of aid recipients to Board of Commissioners or its agency	46-112
Placing of indigent child in hospital	6-202	<b>BOARDING HOUSES</b>	
Treatment by other than registered physician prohibited	6-203	See <b>HOTELS AND LODGINGHOUSES</b>	
Preventative treatment	6-201—6-204	<b>BOARD OF ASSISTANT ASSESSORS</b>	
Duty of health officer to provide prophylactic	6-201	See <b>TAXATION AND FISCAL AFFAIRS</b>	
Duty of physician or midwife to give	6-201	Appointment	47-604
Midwives, duty to secure prophylactic from health officer	6-201	Duties	47-605
Penalty for violating law	6-204	<b>BOARD OF CHARITIES</b>	
<b>BLIND PERSONS</b>		Abolition	3-101
See <b>SOCIAL SECURITY</b>		Transfer of powers and duties to Board of Public Welfare	3-110
Aid pending appeal from discontinuance or reduction	46-106	<b>BOARD OF CHILDREN'S GUARDIANS</b>	
Aid recipients not to solicit alms	46-107	Abolition	3-101
Appeal from discontinuance of aid	46-106	Powers and duties transferred to Board of Public Welfare	3-114
Appeal from reduction of benefits	46-106	<b>BOARD OF COMMISSIONERS</b>	
Appeal to Commissioners of the District	46-105	See <b>COMMISSIONERS OF DISTRICT OF COLUMBIA</b>	
Application for aid	46-102	<b>BOARD OF EDUCATION</b>	
Affidavit	46-104	See <b>EDUCATION</b>	
Contents	46-104	<b>BOARD OF EQUALIZATION AND REVIEW</b>	
Appointment to stand in loco parentis for blind minor	46-114	See <b>TAXATION AND FISCAL AFFAIRS</b>	
Appropriation for instruction of indigent blind	31-1020	Assessor as chairman	47-605
Appropriations and estimates	46-114	Duty to review real property assessment	47-605
Authority of Commissioners of the District	46-101	Membership	47-605
Benefits not to be granted when work or treatment is refused	46-109	<b>BOARD OF OPTOMETRY</b>	
Cessation of aid on removal from District	46-108	See <b>OPTOMETRY</b>	
Cooperation with Federal Social Security Board	46-115	<b>BOARD OF PERSONAL TAX APPEALS</b>	
Discontinuance of aid	46-106	See <b>TAXATION AND FISCAL AFFAIRS</b>	
Eligibility for aid	46-102	Assessor as chairman	47-605
Evidence of blindness required	46-105	Duties	47-1213
Extent of aid	46-105	Membership	47-605
Fraud in obtaining aid, penalty	46-113	Reviewing personal property assessments	47-605
Increase or decrease of benefits	46-106	Sessions	47-1213
Ineligibility for benefits	46-109	<b>BOARD OF PERSONAL TAX APPRAISERS</b>	
Intentional destruction of eyesight	46-110	See <b>TAXATION AND FISCAL AFFAIRS</b>	
Loss of eyesight through crime	46-110	Duties	47-1213
Loss of eyesight through vicious habits	46-110	Employees	47-1213
Refusal of treatment or operation	46-109	<b>BOARD OF PHARMACY</b>	
Refusal of vocational training	46-109	Narcotic drugs	33-403
Refusal to work	46-109	Employees to carry out provisions	33-422
Inmate of institution may apply for aid	46-102	Forfeited drugs	33-417
Intentional destruction of eyesight, effect on relief	46-110	Licensing manufacturers	33-404
Investigating qualifications of recipients at least annually	46-106	Licensing wholesalers	33-403
Liability of recipients' estates for amount of aid	46-112	Rules and regulations	33-405
Liability of relatives for aid	46-111	Suspension and revocation of licenses	33-404
Relatives liable	46-111	<b>BOARD OF PUBLIC WELFARE</b>	
Suit to recover amount of aid paid from relatives	46-111	Annual report to Commissioners, contents	3-123
Liberal construction required	46-116	Antecedents of children, investigation	3-118



BOARD OF PUBLIC WELFARE—Continued		Sec.	BOARD OF PUBLIC WELFARE—Continued		Sec.
Appointment made without regard to sex, race, or religion		3-103	Investigating adoption petitions		16-201
Apprenticing of children		3-117	Investigation of institutions on order of com- mission		3-112
Binding out of children		3-117	Books and papers, power to require pro- duction		3-112
Budget		3-123	Report to commission		3-112
Chairman		3-104	Witnesses, power to call		3-112
Children committed by courts, care and legal guardianship		3-114	Legal residents, indigent persons, return to district		3-110
Children over whom board has supervision		3-116	Legal successor of other boards		3-102
Children committed to care of board		3-116	Members serve without compensation		3-103
Dependent and neglected children		3-116	Municipal Lodging House, control and man- agement		3-106
Inmates of National Training School for Boys, commitment to board		3-116	National Training School for Boys, contracts for maintenance of boys		3-110
Juvenile offenders		3-116	National Training School for Girls Board of trustees, powers transferred		3-122
Children under 17	3-120, 3-121		Control and management		3-106
Commitment to board by Juvenile Court	3-120, 3-121		New institutions, plans submitted to board		3-112
Placing in suitable homes or institutions by board	3-120, 3-121		Nonpartisan board		3-103
Contracts for care of dependent children		3-115	Nonresident indigent persons, return to place of residence		3-110
Creation		3-102	Number of members		3-103
Dependent children, home care	32-701—32-710		Old-age assistance, powers and duties		3-110
Director of public welfare		3-105	Placement of children in suitable homes or institutions		3-123
Appointment by Commissioner		3-105	Religious faith considered		3-123
Chief executive officer of board		3-105	Religious freedom		3-123
Compensation determined by Classifica- tion Act		3-105	Placing children in family homes or private institutions		3-114
Nomination by board		3-105	Religious faith not the same, reasons for action given		3-114
Qualifications		3-105	Power over National Training School for Girls		32-902
Removal from office		3-105	Public charges, admission to institutions, lia- bility for maintenance		3-111
Discharge of child from guardianship		3-125	Public contracts, personal interest in pro- hibited		3-113
District Training School, control and manage- ment		3-106	Reformatory, control and management	3-106, 24-411	
Employees		3-105	Regular meeting		3-104
Appointment and removal, compensa- tion		3-105	Removal of members for cause		3-103
Compensation		3-105	Residence requirement for membership		3-103
Employees for dependent child home care	32-710		Rules and regulations, power to adopt		3-104
Environment of children, investigation		3-118	Secretary		3-104
Feeble-minded children, provision for care and maintenance		3-114	Social study		3-123
Gallinger Municipal Hospital, control and management		3-106	Special meeting		3-104
Home for the Aged and Infirm, control and management		3-106	Superintendents of institutions under control of board		3-107
Indigent persons, medical care and treatment, contracts		3-110	Appointment by Commissioners, nomina- tion by board		3-107
Industrial Home School, control and man- agement	3-106, 32-501		Discharge by Commissioners on recom- mendation of board		3-107
Industrial Home School for Colored Children, control and management		3-106	Management and control of institution		3-107
Insane persons, hospitalization		3-110	System of accounts		3-109
Institutions placed under control of board	3-106—3-111		Temporary provision for care of children		3-116, 3-117
Administration of, rules and regulations, power to adopt		3-108	Duration except on order of Juvenile Court		3-117
Admission of inmates, rules and regula- tions, power to adopt		3-108	Term of office		3-103
Appointment and discharge of personnel		3-107	To supervise District Training School		32-602
Record kept of inmates		3-109	Transfer of powers and duties to board		3-102
Registration of inmates		3-109	Tuberculosis Hospital, control and manage- ment		3-106
Supervision over employees		3-107	Vacancies filled for unexpired term		3-103
Visitorial powers and powers of inspection		3-111			
Institutions supported by congressional ap- propriations, visitorial powers		3-111			



<b>BOARD OF PUBLIC WELFARE—Continued</b>	<b>Sec.</b>
Vice-chairman	3-104
Visitation of children under guardianship of board	3-117
Visitation of child wards	3-114
Visitation of wards of board	3-124
Wards placed outside district in Virginia or Maryland	3-124
Voluntary aid, right to accept	3-119
Placement and supervision of children	3-119
Washington Asylum and Jail, control and management	3-106
Workhouse, control and management	3-106, 24-411

**BOARD OF REVIEW**

Board of Examiners in veterinary medicine, refusal to grant license	2-806
---	-------

**BOARD OF TAX APPEALS**

Appeal of income tax deficiency assessments	47-1531
Appeal of income tax refund claims	47-1534
Appeals to, of personal assessments	47-2403
Assessments voided, appeal of reassessment	47-2405
Board of Assistant Assessors, appeal from	47-2405
Board of Equalization and Review, appeal from	47-2405
Business-privilege tax assessments, appeals	47-2403
Certiorari from Supreme Court to Court of Appeals in review of decisions	47-2404
Decisions final, when	47-2404
Decisions, review by Court of Appeals	47-2404
Petition for review	47-2404
Procedure	47-2404
Determination of erroneous tax payments	47-2407
Equalization of assessments, appeal	47-2405
Establishment	47-2402
Estate tax assessments, appeal	47-2403
Examination of witnesses and records	47-2409
Fees on review	47-2404
General assessments, appeal	47-2405
Gross-earnings assessments, appeal	47-2403
Gross-receipts assessment, appeal	47-2403
Imposition of tax involuntarily paid, appeal	47-2406
Income tax assessment, appeal	47-2403
Inheritance tax assessments, appeal	47-2403
Insurance premium assessments, appeal	47-2403
Manner of serving notices	47-2411
Motor-vehicle fuel tax assessment, appeal	47-2403
New buildings erected or roofed prior to January 1, assessment, appeals	47-2405
New structure and improvement assessments, appeal	47-2405
Omitted property, appeal of assessments	47-2405
Personal-property tax assessments, appeal	47-2403
Qualifications for	47-2402
Real estate assessments, appeal	47-2405
Review of decisions by court	47-2404
Rules of procedure	47-2408
Salary	47-2402
Subdivisions, appeal of reassessment and redistribution	47-2405
Taxation questions, reference by Commissioners of the District	47-2412
Valuations for assessment, appeal	47-2405

**BOARD OF ZONING ADJUSTMENT**

See ZONING REGULATIONS

**BOARDS AND COMMISSIONS**

Sec.

See ACCOUNTANTS; ANATOMICAL BOARD; ARCHITECTS; BARBERS; BASIC SCIENCES; BOARD OF PUBLIC WELFARE; BOXING EXHIBITIONS; COMMISSIONERS OF DISTRICT OF COLUMBIA; COMMISSION OF FINE ARTS; COSMETOLOGISTS; DENTISTRY; HEALING ARTS PRACTICE ACT; INSANITARY BUILDINGS; NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NURSES; OPTOMETRY; PARKS AND PLAYGROUNDS; PHARMACY; PLUMBING; PODIATRY; POLICE AND FIREMEN'S RELIEF FUND; POLICE DEPARTMENT; STEAM AND OTHER OPERATING ENGINEERS; VETERINARIANS

**BOARDS OF TAXATION**

See TAXATION, BOARDS OF

**BOARDS OF TRADE**

Business to be carried on	29-308
By-laws	29-306
Dissolution	29-701—29-729
Fines	29-307
Collection	29-307
Imposition	29-307
General powers	29-301
General provisions	29-101—29-105
Income tax, when exempted	47-1502
Incorporation	29-301
Officers	29-303—29-305
Election	29-304
Failure to elect, effect	29-304
Tenure	29-305
Power to hold personalty	29-302
Power to hold real estate, limitation	29-302

**BOATHOUSES**

Potomac Park	8-157
--------------	-------

**BODILY HARM**

See ASSAULT	
Threatening, penalty	22-507

**BOILER INSPECTION**

Abatement of unauthorized use of boiler	1-713
Act to regulate steam engineering not repealed	1-716
Annual inspection	1-707
Application of law	1-705, 1-706
Boiler inspector	1-703, 1-704, 2-1502
Appointment by Commissioners	1-703
Bond, amount	1-704
Member of Board of Examiners of Steam and Other Operating Engineers	2-1502
Oath of office	1-704
Boilers, testing	2-1502
Cancellation of insurance, notice given inspector	1-707
Certificate of inspection	1-707, 1-708, 1-710, 1-712
Cessation of insurance, certificate invalidated	1-710
Insured boilers	1-707
Fee	1-710
Issuance	1-707
Record kept	1-712
Revocation, ground	1-708
Suspension, grounds	1-708



BOILER INSPECTION—Continued		Sec.	BONDING COMPANIES		Sec.
Constitutionality of act, provision separable	1-717		Excise tax		47-1702
Criminal offenses	1-714, 1-718		Income tax, when exempted		47-1502
Information filed by corporation counsel	1-714		<b>BONDS AND OTHER SECURITIES</b>		
Penalties for violating law	1-714		See NEGOTIABLE INSTRUMENTS		
Penalty for violating regulations, effective date	1-718		Federal laws applicable to District, reference		28-2803 note
Police Court, jurisdiction	1-714		Issuance by District for loans and advances made by Government		9-213
Prosecution by corporation counsel	1-714		Issuance by public utilities	43-801—43-808	
Violation separate offense	1-714		<b>BONDS AND UNDERTAKINGS</b>		
Effective date of act	1-718		See CRIMINAL PROCEDURE		
Enforcing officer	1-703		Additional bond of executors, administrators selling realty		20-104
Exemption	1-705, 1-709		Assessor's bond		47-602
Busses	1-709		Assignment		28-2502
Commissioner's power to grant	1-705		Attachment and garnishment		16-301
Locomotives	1-709		Auditor		47-120
Public service vehicle	1-709		Board of Dental Examiners, bond of secretary-treasurer		2-302
Street cars	1-709		Board of Examiners in veterinary medicine, right to require of officers		2-802
Water-craft operated by United States	1-709		Board of Optometry, secretary-treasurer		2-506
Exemption from inspection by Commissioners	1-705		Board of Pharmacy, treasurer		2-607
Feed pumps not in proper working order, operation of boiler prohibited	1-706		Board of Podiatry Examiners, treasurer		2-702
Fees	1-710, 1-715, 1-718		Boiler inspector		1-704
Commissioners empowered to fix	1-715		Bond		
Effective date of fee schedule	1-718		Definition		28-2401
Fixed by Commissioners	1-710		Fiduciary's, in District Court		28-2403
Gauges not in proper working order, operation of boiler prohibited	1-706		Bonds in penal sum, with avoidance condition		28-2405
Insurance companies, report of inspection	1-707		Effect		28-2405
Insured boilers	1-710		Limit of liability of sureties		28-2405
Name of act	1-701		Bonds to United States		28-2406
Nuisances, unauthorized use of boiler	1-713		Actions by private persons		28-2406
Officials and employees of service, appointment	1-703		By fiduciaries		28-2406
Operating boiler and pressure greater than permitted by certificate, prohibited	1-706		By public officers		28-2406
Operating pressure in excess of 15 pounds per square inch	1-705		Copies to private persons		28-2406
Inspection mandatory	1-705		Business-chance brokers and salesmen		45-1405
Operating pressure less than 15 pounds per square inch	1-705		Cashier of collector of taxes		47-304
Unassisted gravity return	1-705		Chief clerk of auditor's office		47-122
Operation of boiler prohibited, ground	1-705, 1-706		Clerk of Court of Appeals		11-204
"Person," definition to include "individuals, firms, and corporations"	1-702		Clerk of District Court		11-401
Records	1-712		Collector of taxes		47-302
Regulations, Commissioners empowered to adopt	1-715		Collectors		20-402
Amendments	1-718		Committee for drug addict		21-401
Promulgation, effective date	1-718		Committee for drunkard		21-401
Repeal of conflicting laws, saving clause	1-716		Conveyances in fraud of creditors		12-401
Right of entry of inspector and assistants	1-711		Coroner		11-1202
Denial of admittance unlawful	1-711		Dead human body, medical schools giving bond		2-204
Safety devices not in proper order, operation of boiler prohibited	1-706		Definitions		
Service created, personnel	1-703		Bond		28-2401
Testing of conditions	1-707		Undertaking		28-2402
Unauthorized use of boiler prohibited	1-713		Deputy collector of taxes		47-303
Underfired pressure boiler	1-705, 1-706		Deputy disbursing officer		47-113
Capacity in excess of 15 gallons	1-705		Disbursing officer of the District		47-112
Operating pressure in excess of 60 pounds per square inch	1-705		Exceptions		11-1507
Valves not in proper working order, operation of boiler prohibited	1-706		District of Columbia and its officials		11-1507
			United States and its officials		11-1507
			Executors and administrators	12-201, 20-117	
			Fiduciary's bond		
			Payment to self in another capacity, effect		28-2407



BONDS AND UNDERTAKINGS—Continued		Sec.
Fiduciary's bond, in District Court	28-2403	
Form	28-2403	
Undertaking in lieu of bond	28-2403	
Fiduciary's undertaking, in District Court	28-2403	
Actions	28-2403	
Form	28-2403	
In lieu of fiduciary's bond	28-2403	
Judgments on	28-2403	
Proceedings	28-2403	
Remedies	28-2403	
Fire, casualty, and marine insurance brokers	35-1336	
Incorporators of domestic life insurance companies	35-502	
Injunction		
Pendente lite, counsel fees allowed	28-2404	
Preliminary, counsel fees allowed	28-2404	
Interest rate	28-2702	
Judgments on as liens	15-103	
Lost instruments, pleading	13-204	
Marine brokers' dealing with unlicensed insurers	35-1126	
Marshal	11-1101	
Municipal Court clerks	11-709	
Notaries public	1-504	
Nurses' Examining Board, treasurer	2-403	
Officers and employees of District	1-213	
Officers receiving or disbursing funds	1-213	
Powers of Commissioners	1-213	
Premiums on bonds, payment	1-213	
Plumbers, amount of bond, terms and conditions	2-1404	
Plural breaches, pleading	13-205	
Police Department officers, when required	4-109	
Private detectives	4-169—4-171	
Amount of bond	4-169	
Filing of bond	4-170	
Forfeiture of bond, suits against sureties	4-171	
Private employment agencies	47-2102	
Probate Court	28-2403	
Professional bondsmen	23-601—23-612	
Property clerk returning property to owner		
pending trial	4-163—4-165	
Public contractor's bond	1-804—1-806	
Action on bond	1-804	
Amount	1-804	
Claims for labor and material	1-804	
Contract involving sum not exceeding \$1,000, waiver of bond	1-805, 1-806	
Interveners	1-804	
Notice of action on bonds, publication	1-804	
Payment of money into court by surety	1-804	
Splitting contract to avoid giving bond prohibited	1-805	
Statute of limitation, actions on bond	1-804	
Terms and conditions	1-804	
Purchasing officer of District	1-304	
Deputies	1-305	
Real estate brokers and salesmen	45-1405	
Register of Wills	19-402	
Release from attachment	16-311	
Replevin	11-725, 16-1804	
Municipal Court	11-725	
Restraining order, counsel fees allowed	28-2404	

BONDS AND UNDERTAKINGS—Continued		Sec.
Sequestration, Probate Court, defendant's bond	11-508	
Solicitors, house to house	47-2337	
Staying collection of jeopardy assessment under income tax law	47-1532	
Street improvement contracts, bond of contractor	7-603	
Superintendent of National Training School for Boys	32-810	
Superintendent of weights, measures, and markets	10-102	
Sureties	28-2403	
Treasurer of Board of Cosmetology	2-1302	
Treasurer of National Training School for Boys	32-809	
Undertaking		
Definition	28-2402	
Fiduciary's, in District Court	28-2403	
United States District Court	28-2403	
Water registrar	43-1506	

**BONFIRES**

Kindling, penalty	22-1113
-------------------	---------

**BOOK-MAKING**

Criminal offense	22-1508
------------------	---------

**BOOKS**

Property of District	1-106
Stealing or injuring, penalty	22-3106

**BORAX**

Sale by other than pharmacist	2-601
-------------------------------	-------

**BOTTLES**

Beverage bottles, registration	48-101
Milk-beverage bottles, registration	48-301—48-307
Milk bottles, registration	48-201—48-211
Use or sale of registered bottles without owner's permission	48-102

**BOTTLING PLANTS**

License	47-2327
Registration of beverage bottles	48-101
Unauthorized use or sale of registered bottles	48-102

**BOUNDARIES**

Certificates of surveyor	1-619
City of Washington	1-107
Destroying boundary trees, stones, penalty	22-3109
District of Columbia	1-101
Highways, markers	7-105
Marking by surveyor	1-619
Metropolitan Police district	4-102
Party-walls	1-625, 1-628

**BOWLING ALLEYS**

Hours when operation is prohibited	47-2321
License	47-2321
Approval by major and superintendent of police	47-2321
Fee	47-2321

**BOXES**

Apple box, standard dimension	10-115
Pears, standard box, dimensions	10-115



BOXES—Continued		Sec.	BRIBERY		Sec.
Small fruits and vegetables, standard con-	tainer	10-115	Conviction of, disqualification from holding office		1-316
Use of other than standard containers pro-	hibited	10-116	Definition		22-701
<b>BOXING EXHIBITIONS</b>			Penalty		22-701
See PRIZE FIGHTS			To procure District office		22-702
Amateur boxing, exception from act, condi-	tions	2-1209	Accepting		22-702
Boxing Commission		2-1201, 2-1202	Giving		22-702
Amateur boxing, powers concerning		2-1202	<b>BRIDGES</b>		
Appointment		2-1201	Anacostia Bridge		7-505
Clerical assistance		2-1201	Cost of maintenance and repairs, collec-	tion and apportionment	7-505
Number of members		2-1201	Cost of pavement between tracks on	bridge, payment	7-505
Office safe		2-1201	Right of railroads to use tracks		7-505
Qualifications of members		2-1201	Underfloor construction of electrical con-	ductors and cables, payment of cost	7-505
Rules and regulations, power to adopt		2-1202	Appropriations for construction and repair		7-502
Serve without compensation		2-1201	Use for constructing viaducts over rail-	ways and canals	7-502
Supervision and regulation of boxing			Benning Bridge		7-514
within District		2-1202	Lien of share of cost on property of street	railway	7-514
Term of office		2-1201	Share of cost borne by street railway		7-514
Vacancies filled for unexpired term		2-1201	Calvert Street Bridge		7-524
Definition of terms used		2-1203, 2-1209	Paving between tracks by street railway		7-524
License to engage in		2-1204, 2-1206	System of street car propulsion, installa-	tion by street car company	7-524
Duration		2-1204	Cedar Street Underpass		7-519
Fee		2-1206	Use by street railway company, payment	of share of cost	7-519
Revocation, ground		2-1204	Chestnut Street Underpass		7-523
Penalties for violating laws		2-1207	Closing of grade crossing		7-523
Permit to hold		2-1203	Division of cost between district and Bal-	timore and Ohio Railroad	7-523
Conditions under which granted		2-1203	Maintenance after construction by rail-	way company	7-523
Duration		2-1203	Commissioners of District, control over		7-102
Fee		2-1206	Commissioners vested with control, Aqueduct	Bridge excepted	7-501
One or more bouts authorized		2-1205	Connecticut Avenue Bridge over Klinge	Valley	7-513
Power to revoke		2-1203	Paving between tracks, payment of cost		7-513
Reservation of right to examine books			System of car propulsion, installation by	street railway	7-513
and records		2-1203	Eastern Avenue Viaduct		7-515
Prize fights		22-1105, 22-1106	Use by street railway company, payment	of share of cost	7-515
Penalty		22-1105	Fern Street Viaduct		7-515
"Pugilistic encounter" defined		22-1106	Closing of grade crossings		7-515
Rest period between rounds		2-1205	Use by street railway, conditions		7-515
Round not to exceed three minutes		2-1205	Francis Scott Key Bridge		7-511
Schools, colleges, or universities conducting		2-1209	Commissioners given control of		7-511
Exception from act		2-1209	Electrical propulsion to be used by rail-	roads	7-511
"School" or "college" defined		2-1209	Gas and water mains		7-511
Weight of glove		2-1205	Interurban railroads, right to use bridge		7-511
<b>BRANDS</b>			Paving between tracks, payment of cost		7-511
Forging or imitating, penalty		22-1402	Power, telegraph and telephone wires or	cables	7-511
<b>BRANDY</b>			Used for highway traffic		7-511
See ALCOHOLIC BEVERAGES			Washington and Old Dominion Railway,	use of bridge	7-511
Definition of "spirits" includes		25-103			
<b>BREAD</b>					
Bun and roll, exception from weighing and	sale regulation	10-113			
Crackers, exception from weighing regula-	tion	10-113			
Label attached to loaf, content		10-113			
Pretzels, exception from weighing regulation		10-113			
Scale for weighing of loaves		10-113			
Scones, exception from weight regulations		10-113			
Stale bread, sale		10-113			
Standard loaf		10-113			
Tolerances as to weight		10-113			
Weight of loaf		10-113			



**BRIDGES—Continued**

Highway Bridge	7-507
Abutment and roadway maintained and controlled by Commissioners	7-103
Control by Commissioners	7-507
John Philip Sousa Bridge over Anacostia River	7-506
Long Bridge	7-508
Baltimore and Potomac Railroad Company, duty	7-508
Maintenance of draw	7-508
Right of other railroad companies to pass over bridge	7-508
Tugboats, passage under bridge without using draw, construction	
Approval by Secretary of War	7-509
Requirements	7-509
Maintenance and employee costs to be included in budget estimates	47-207
Pavement between tracks by street railways	7-507
Street railways, right to use bridge	7-507
Tugboats passing under without use of draw, construction, approval by Secretary of War	7-509
Use for highway traffic	7-507
Michigan Avenue Viaduct	7-520
Construction authorized	7-520
Division of cost between District and Baltimore and Ohio Railroad	7-520
Grade crossing closed	7-522
Use by street railways, payment of share of cost	7-521
Monroe Street Viaduct	7-510
Use by street railway, payment of share of cost	7-510
National Zoological Park, supervision of plans	8-134
Pennsylvania Avenue Bridge	7-504
Maintenance and repair, apportionment of cost	7-504
Railroads occupying, payment for lighting	7-709
Regulations for control and lighting	7-501
Retention of percentage of final payment due contractor	1-807
Interest, retent in excess of \$100	1-807
Investment of funds	1-807
Period for which retained	1-807
Purposes for which retained	1-807
Rock Creek bridges, maintenance and repair, apportionment of cost	7-503
South Dakota Avenue Bridge	7-512
Street railways using, payment of share of cost	7-512
Street railways, excess cost of construction and maintenance, payment	7-604 note
Van Buren Street Underpass	7-518
Closing of grade crossing	7-518
Use by street railway, payment of share of cost	7-517
Varnum Street Viaduct	7-515
Use by street railway, condition	7-515
Viaducts, construction over railroad and canal rights of way	7-502
Collection and deposit of cost of work	7-502
Lien of cost	7-502

**BRIDLE PATHS**

Rock Creek Park	8-148
-----------------	-------

**BRITISH STATUTES**

In force in Maryland on February 27, 1801, effect of Code	49-301
---	--------

**BROAD BRANCH ROAD**

Closing in part authorized, consent of property-owners	7-123
--	-------

**BROKERS**

See BUSINESS-CHANCE BROKER; INSURANCE AND INSURANCE COMPANIES; REAL ESTATE BROKERS AND AGENTS	
Negotiating negotiable instruments, liability	28-510
Note broker	
Definition	47-1708
Taxation	47-1708

**BUCKET SHOPS**

Bucketing, penalty	22-1510
Communicating, displaying quotations	22-1511
Corporations	22-1510
Domestic, dissolving	22-1510
Foreign, dissolving	22-1510
Definitions	22-1509
Bucketing	22-1509
Bucket-shopping	22-1509
Commodities	22-1509
Contract	22-1509
Keeper	22-1509
Person	22-1509
Securities	22-1509
Demand for statement on purchases, sales	22-1512
Keeping, penalty	22-1510
Refusing demand for statement, effect	22-1512

**BUDGETS****See TAXATION AND FISCAL AFFAIRS**

As nearly as possible to be within aggregate appropriations	47-503
Assessment of real estate, expenses	47-209
Board of Public Welfare	3-123
Compensation of injured District employees	1-311
Expenses for witnesses and evidence in claims against District	47-208
Expenses of District Court	47-204
Highway bridge maintenance and employees	47-207
Injured employees, compensation payment	1-311
Judiciary Square, buildings on, loans for construction, amortization	9-210
National Capital Park and Planning Commission	8-107
Not restricted to needs of District	47-503
Not to be published before submission to Congress	47-212
Order of arrangement	47-211
Salaries for care and protection of courthouse	47-201
School estimates to accord with 5-year building program	47-203
Sewer maintenance and employees	47-206
Smoke Prevention Law, expenses of enforcement	6-804
Submission to Bureau of the Budget	47-503
Superintendent of Washington Asylum and Jail, salary	47-201



**BUDGETS—Continued**

Water department expenses	47-210
Zoning commission, salary and expenses	5-426

**BUILDERS**

Right to make plans and specifications, signing required	2-1017
--	--------

**BUILDING ASSOCIATIONS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS**

Advancements	26-406
Foreclosure	26-413
Premiums not usurious	26-406
Repayment	26-411
Security, mortgage and pledge of shares	26-407
Bonus payable by late subscribers	26-403
Certificate, recording	26-401
Dividends on profits	26-408
Exchanging assets for H. O. L. C. bonds	26-416
Excise tax	47-1704
Foreign associations	26-405
Forfeitures by shareholders	26-412
Income tax, when exempted	47-1502
Incorporation	26-401
Insolvency	26-404
Abatement of personal property tax	47-1705
Misappropriation as larceny	26-404
Object	26-404
Perjury	26-404
Power of Comptroller of Currency	26-404
Powers	26-401, 26-402
Purchase of H. O. L. C. bonds	26-415
Purchasing shares in Federal Home Loan Bank	26-415
Realty investments	26-414
Redemption of shares	26-409
Withdrawal by shareholder	26-410

**BUILDING INSPECTOR**

Assistant inspector, inspection of elevators and fire escapes	1-729
Barbed-wire fences, removal, assessment of cost against property	7-1105
Certificate of compliance, fire escape and safety regulations for buildings	47-2302
Certifying safety precautions for shooting galleries	47-2322
Fees for permits, certificates, and transcripts	5-429
Display of schedule in office	5-429
Fixed by Commissioners of District	5-429
Member of Board for Condemnation of Insanitary Buildings	5-601
Principal assistant acting as member	5-602
Principal assistant inspector, discharge of duties of inspector	1-728
Unsafe structures and excavations	5-501—5-503
Immediate action required, remedying of condition	5-501
No immediate action required, survey by disinterested person	5-502
Notice given owner or interested party	5-501
Remedying of conditions by building inspector	5-503

**BUILDING LINES**

Alley dwellings	5-101
Appropriations for establishment	5-206

**BUILDING LINES—Continued**

Buildings existing at time of establishment, exception	5-205
Reconstruction or alteration of building, affect	5-205
Commissioners acting on own initiative	5-201
Commissioners of District, powers	5-201
Dedication of streets by landowners	7-117
Eminent domain proceedings	5-202, 5-203
Assessment of any and all lands benefited	7-319
Assessment proceedings, law governing	5-203
Institution of proceedings	5-202
Law governing procedure	5-203
Petition, filing, contents	5-202
United States District Court, jurisdiction	5-202
Houses, adjustment of line of front to line of street by surveyor	1-628
Permits for extension of buildings beyond line	5-204
Director of National Park Service, when required to approve	5-204
Existing permits legalized	5-204
Restrictions on issuance of subsequent permits	5-204
Special application, concurrence of commissioners	5-204
Petition for establishment	5-201
Signature by more than half of property-owners	5-201
Plats	5-201, 5-202
Recording of plats	5-202
Street parking, control of Commissioners over	5-205
Streets less than 90 feet wide	5-201
Streets more than block in length	5-201

**BUILDING MATERIALS**

Testing by Bureau of Standards	1-813
--------------------------------	-------

**BUILDING REGULATIONS**

Amendment of existing regulations	5-415, 5-416
Building or altering in violation of, penalty	5-408
Certificates of occupancy	5-422
Height of building	5-418
Sale and exchange of copies	49-110

**BUILDINGS**

See <b>ALLEY DWELLINGS; BUILDING INSPECTOR; BUILDING LINES; CAPITOL GROUNDS; FIRE ESCAPES AND SAFETY PROVISIONS; INSANITARY BUILDINGS; PUBLIC BUILDINGS AND WORKS; SMOKE PREVENTION; UNSAFE STRUCTURES; ZONING REGULATIONS</b>	
Annoying odors prohibited	6-801
Assistant inspector	1-729
Elevators, inspection	1-729
Fire escapes, inspection	1-729
Bulk and size, zoning regulations	5-413
Capitol Buildings and Grounds, protection	9-105—9-117
Combustible or nonfireproof building	5-401—5-409
Addition, fireproof construction, when required	5-404
Apartment and lodging-houses, number of stories, maximum height	5-401



BUILDINGS—Continued	Sec.	BUILDINGS—Continued	Sec.
Combustible or nonfireproof building—Continued		Permits for construction or alteration	5-422
Buildings occupied for business purposes, maximum height	5-402	Certificates of occupancy, when required	5-422
Churches	5-403	Duty to obtain	5-422
Dormitories, number of stories, maximum height	5-401	Restrictions on issuance by building inspector	5-422
Frame building for use as human habitation, maximum number of stories	5-406	Plats, areas requiring submission of plans to Commission of Fine Arts	5-411
Hospitals, number of stories, maximum height	5-401	Preparation by Commissioners and National Capital Park and Planning Commission	5-411
Definition, Architects Licensing Law	2-1018	Playgrounds, temporary structures, licensing	8-129
Elevators, regulations for construction and operation, penalty	1-229	Principal assistant inspector	1-728
Enjoining construction	5-422	Discharge of duties of inspector	1-728
Fees for permits, certificates or transcripts issued by building inspector	5-429	Regulations	1-228
Cancelation of permits for nonuse, refund of fees	5-430	Force and effect	1-228
Fire escapes, and safety provisions	5-301—5-316	Power of Commissioners to adopt	1-228
Fireproof construction required	5-403	Reservation of right to alter, amend, or repeal law	5-409
Additions to nonfireproof buildings	5-404	Sewer connections	6-401—6-404
Apartment houses more than three stories in height	5-403	Smoke prevention	6-801—6-804
Buildings more than 60 feet in height	5-403	Unsafe structures	5-501—5-505
Churches	5-403	Violation of zoning laws and regulations prohibited	5-422
Exception concerning Square 345 of District	5-404	Water-main connections, drainage into sewers	6-401
Hotel, three stories or more in height	5-403	Zoning District	5-413
Seating capacity of more than 300	5-403	Zoning regulations	5-412—5-428
Theaters	5-404	Existing regulations, continued in effect	5-415
Towers, spirals, and domes	5-404		
Fronting certain Government property, approval of plans by Commission of Fine Arts	5-410	<b>BULK SALES</b>	
Height		Application	28-1701
Governed by width and character of street	5-405	Compliance, effect	28-1702
Basis of measurement	5-407	Creditors, notice of intended purchase	28-1702
Buildings fronting public place or reservation	5-405	Creditors, statement regarding	28-1701
Business street or avenue, exception	5-405	Definition	28-1703
Chimneys	5-405	Evidence, rules of not affected	28-1705
Corner lot	5-405	Executors and administrators, exemption	28-1704
Exceptions as to certain locations and buildings	5-405	Exemption of executors and administrators	28-1704
Parapet	5-407	Exemptions	28-1704
Penthouses over elevator shaft	5-405	Official sales exempted	28-1704
Public buildings	5-405	Presumptions not affected	28-1705
Residence street	5-405	Receivers, exemption	28-1704
Spires, towers, dome, and similar structures	5-405	Sales in bulk	28-1701
Sprinkler tanks	5-405	Definition	28-1703
Union Station Plaza	5-405	Vendee	
Ventilator shaft	5-405	Duty to furnish creditors notice of intended purchase	28-1702
Width as governing height	5-405	Duty to require statement as to creditors	28-1701
Maximum fixed by law	5-401—5-409, 5-418	Failure to demand statement, effect	28-1702
Power of Zoning Commission to regulate	5-413	Failure to notify creditors, effect	28-1702
Insanitary buildings	5-601—5-615	Vendor	
National Zoological Park, supervision of plans	8-134	Duty to furnish statement as to creditor	28-1701
Nuisances, erection or alteration in violation of law	5-408	When presumed fraudulent	28-1702
Injunctions, contempt, penalty	5-408	Written statement as to creditors	28-1701
Penalty	5-408	Contents	28-1701
Number of stories, zoning regulations	5-413	Duty of purchaser to demand	28-1701
		Duty of seller to furnish	28-1701
		<b>BULL FIGHTS</b>	
		See CRUELTY TO ANIMALS	
		Keeping or using place	22-809
		Penalty	22-810



<b>BURDEN OF PROOF</b>	Sec.	<b>BUTTER</b>	Sec.
Cancellation of negotiable instrument through mistake	28-805	See <b>FOOD AND DRUGS</b>	
Holding in due course, title of transferor defective	28-409	Swill milk, made from, not to be sold	33-313
<b>BUREAU OF INTERNAL REVENUE</b>		<b>BUZZARDS POINT</b>	
Divulging information obtained from, penalty	47-2504	Railroad facilities	7-1216
Furnishing income tax data to District	47-1528	<b>CADAVERS</b>	
Supplying data for inheritance and estate taxation	47-1625	See <b>DEAD HUMAN BODIES</b>	
<b>BUREAU OF STANDARDS</b>		<b>CALENDAR</b>	
Testing of building material	1-813	See <b>COMPUTATION OF TIME</b>	
<b>BUREAU OF VITAL STATISTICS</b>		<b>CALVERT STREET BRIDGE</b>	
See <b>VITAL STATISTICS</b>		Paving between tracks by street-car company	7-524
Adoption, notice to be given	16-204	System of street-car propulsion, installation by street-car company	7-524
<b>BURGLARY</b>		<b>CANALS</b>	
Definition and penalty	22-1801	Viaducts, construction over, lien of cost	7-502
<b>BURLESQUE HOUSES</b>		<b>CANAL STREET</b>	
See <b>THEATRES AND SHOWS</b>		Abandonment in part	7-123 note
License fee	47-2320	Building fronting, approval of plan by Fine Arts Commission	7-1219
Prerequisites to license	47-2302	<b>CANCELATION</b>	
Revocation of license for violation of decency regulations	47-2303	Negotiable instruments, mistake, effect, burden of proof	28-805
<b>BUSHEL</b>		<b>CANDY</b>	
Dimension, fruit and vegetable boxes	10-115	Adulterated candy, manufacture or sale prohibited, penalty	33-201, 33-202
Hampers, dimensions	10-115	Barytes, use in candy prohibited	33-201
<b>BUSINESS</b>		Poisonous colors or flavors, use prohibited	33-201
Married woman's right to engage in	30-208	Prosecution of violations of anti-adulteration act	33-203
<b>BUSINESS-CHANCE BROKER</b>		Talc, use in candy prohibited	33-201
Definition	45-1402	Terra alba, use in candy prohibited	33-201
Licensing act	45-1401—45-1418	<b>CANNABIS</b>	
<b>BUSINESS CORPORATIONS</b>		See <b>NARCOTIC DRUGS</b>	
See <b>CORPORATIONS FOR PROFIT</b>		Definition	33-401
<b>BUSINESS HOUSES</b>		Records kept of receipts or production	33-411
Combustible or nonfireproof building, maximum height	5-402	<b>CANTHARIDES</b>	
Right to dispose of own refuse	6-507	Sale, restrictions	2-612
<b>BUSINESS LICENSE FEES</b>		<b>CAPITAL PARK AND PLANNING COMMISSION</b>	
See <b>LICENSES</b>		See <b>NATIONAL CAPITAL PARK AND PLANNING COMMISSION</b>	
<b>BUSINESS STREETS</b>		<b>CAPITAL PUNISHMENT</b>	
Designation by Commissioners	8-108	See <b>CRIMINAL PROCEDURE; DEATH PENALTY</b>	
Power of Commissioners to designate	7-1205	<b>CAPITOL GROUNDS</b>	
<b>BUS LINES</b>		Abusive language, use prohibited	9-110
Authority of Commissioners of District	47-2331	Advertisements prohibited	9-108
Authority of Public Utilities Commission	47-2331	Arrest of offenders	9-113
License	47-2331	Bringing before proper tribunal	9-113
Application for extension of service	47-2331	Powers of policeman and watchman	9-113
Application to public utilities commission	47-2331	Authority to suspend regulation	9-115, 9-116
Identification tag	47-2331	Band concerts	9-117
Issuance by Commissioners of the District	47-2331	Begging prohibited	9-108
Tax	47-2331	Buildings fronting, plans, approval by Commission of Fine Arts	5-410
<b>BUSSES</b>		Criminal offenses, punishment	9-112
See <b>MOTOR VEHICLES</b>		Display of banners and flags, restrictions	9-111



**CAPITOL GROUNDS—Continued**

	Sec.
Employees, duty to aid in enforcement of penal provisions of law	9-114
Enlargement	9-105 note
Explosives or combustible material, setting off prohibited	9-110
Firearms or fireworks, discharge prohibited	9-110
Information concerning offenses, duty of employees to furnish	9-114
Injuries to grounds, statues, walls, or other structures prohibited	9-109
Obstruction or improper use of roads	9-107
Offering or exposing articles for sale prohibited	9-108
Parades and assemblages, prohibition	9-111
Plants and shrubbery, injury prohibited	9-109
Public use confined to roads and walks	9-106
Regulation for protection	9-105
Sergeant at Arms, powers of arrest	9-105
Soap box orators prohibited	9-110
Suspension of regulation prohibiting processions or assemblages	9-115, 9-116
Trespassing prohibited	9-106

**CAPITOL POLICE**

Capitol grounds, authority of commissioners to suspend regulation	9-116
---	-------

**CAPTAINS**

Fire department	4-404
Salary	4-405
Police department	4-106, 4-108, 4-109
Bond	4-109
Command police precincts	4-106
Duties	4-106
Number	4-106
Salary	4-108

**CARBOLIC ACID**

Poison, sale, restrictions	2-612
----------------------------	-------

**CARNIVALS**

Carnival building license	47-2320
Outdoor, license	47-2326

**CARRIERS**

See **COMMON CARRIERS**

**CASHIER**

Negotiable instrument made payable to	28-313
Indorsement by bank or corporation	28-313

**CASUALTY INSURANCE**

See **INSURANCE AND INSURANCE COMPANIES**

**CATHEDRAL AVENUE**

Jewett Street, name changed	7-107 note
-----------------------------	------------

**CAUSTIC SUBSTANCES**

Poisonous combinations and compounds, sale, restrictions	2-612
--	-------

**CAVEAT**

See **WILLS**

Wills not to be probated while pending	19-307
--	--------

**CEDAR ROAD**

Abandonment in part authorized	7-123 note
--------------------------------	------------

**CEDAR STREET UNDERPASS**

Use by street railway company, payment of share of cost	7-519
---	-------

**CEMENT**

	Sec.
Inspector, restriction on services rendered others	1-307

**CEMETERIES AND CREMATORIES**

Cemeteries	
Dedication, title vesting in perpetuity	27-112
Duty to inclose and underdrain	27-105
Exemption from taxation	47-801
Lots to be marked	27-115
Mode of burial	27-122
Plats to be recorded	27-115
Register	27-116
Reopening graves, restrictions	27-123
Restrictions on location	27-114
Size and depth of graves	27-115
Superintendent to register at health department	27-117
Cemetery associations	27-101
Acquiring realty	27-102
By-laws	27-110
Certain cemetery associations exempt from income tax	47-1502
Exemption from sale on execution	27-111
Exemption from taxation	27-111
Grants and bequests for care of lots	27-113
Inclosing, ornamenting, equipping	27-104
Incorporations	27-101
Lot owners to be members, voting	27-109
Officers and directors	27-107
Designation	27-107
Election	27-108
Platting and surveying burial grounds	27-103
Powers	27-101
Proceeds of sale of lots	27-106
Containers for ashes of indigent persons, duties of health officers	6-115
Crematories	27-124
Locations	27-124
Permit to cremate required	27-125
Preexisting	27-124
Public crematory	27-130
Establishment	27-130
Fees	27-130
Location	27-130
Rules and regulations	27-130
Grave robbery, penalty	2-206
Interment, disinterment, and disposal of bodies	27-118
Penalty for violations	27-126
Promotion of anatomical science	27-131
Property of, destroying, penalty	22-3114
Prosecutions	27-126
Reservation number 13, use as burial ground, indigent dead	8-141
Streets and public ways, rights of way through cemeteries	1-615

**CENSURE**

See **ATTORNEYS**

**CENTER MARKET**

Discontinuance of use as market	10-137, note
---------------------------------	--------------

**CENTRAL HEATING PLANT**

District buildings on certain squares and reservations, heating, charges, connections with main	9-104
---	-------



<b>CENTRAL HEATING PLANT—Continued</b>	Sec.	<b>CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS—Continued</b>	Sec.
Judiciary Square, heat furnished	9-103	General provisions	29-101—29-105
Connections with Government main	9-103	Incorporation	29-602
Payment for heat by District	9-103	Name, limitation	29-606
		Property	29-605
<b>CERTIFICATES</b>		Leasing	29-605
See <b>BOILER INSPECTION</b>		Mortgaging	29-605
<b>CERTIFIED CHECKS</b>		Selling	29-605
Certification equivalent to acceptance	28-1005	Purposes of formation	29-601
<b>CERTIFIED COPIES</b>		Benevolent	29-601
Board of Dental Examiners, records	2-303	Charitable	29-601
Board of Optometry, records	2-508	Educational	29-601
Board of Podiatry Examiners, record	2-702	Literary	29-601
False certification of recordable instruments, penalty	22-1308	Missionary	29-601
Notary of official act	1-512	Musical	29-601
Notary public of records	1-512, 1-513	Mutual improvement	29-601
Optometry, license to practice	2-513	Promotion of the arts	29-601
Surveyor's records, prima facie evidence	1-611	Religious	29-601
		Scientific	29-601
<b>CERTIFIED PUBLIC ACCOUNTANTS</b>		Reincorporation	29-604
See <b>ACCOUNTANTS</b>		Taxation of property	29-602
<b>CERTIORARI</b>		Trustees	29-603
District Court empowered to issue writ	11-315	Election	29-603
		Quorum	29-603
<b>CHALLENGES</b>		To manage and control corporation	29-603
See <b>CRIMINAL PROCEDURE</b>			
Cause for, not ground for setting aside verdict, exceptions	23-108	<b>CHARITABLE INSTITUTIONS</b>	
Jurors, array or poll, United States District Court	11-319	Appointment and discharge of personnel	3-107
<b>CHAMBERS OF COMMERCE</b>		Appropriations for real estate by Congress	32-1003
Income tax, when exempted	47-1502	Acceptance deemed agreement to lien	32-1003
		To be lien on property	32-1003
<b>CHAMPAGNE</b>		Board of Public Welfare	
See <b>ALCOHOLIC BEVERAGES</b>		Supervisory powers	3-106, 3-107
Definition of "wine" includes	25-103	Visitorial powers	3-111
<b>CHANGE OF NAME</b>		Buildings exempted from taxation	47-801
See <b>NAMES</b>		Home for the Aged and Infirm, control and management by Board of Public Welfare	3-106
<b>CHARCOAL</b>		Income tax exemption	47-1502
Delivery ticket	10-111	Investigation by Board of Public Welfare	3-112
Original and duplicate required	10-111	Commissioners of District ordering	3-112
Surrender of original to superintendent or inspector upon demand	10-111	Powers and duties	3-112
Name of seller displayed on vehicle making delivery	10-111	Investigations by Commissioners of the District when appropriations are received	32-1001
Sale by weight required	10-111	Jury service, exemption of keepers	11-1420
Sale in quantities of less than ton, regulation	10-111	Liability of District for care and treatment of inmates	3-110, 3-111
Verification of weight of load	10-111	Members of Congress as trustees, terms	32-1004
Weighing required while on way for delivery	10-111	Municipal lodging-house, control and management by Board of Public Welfare	3-106
Wetting before weighing prohibited	10-111	New institutions, submission of plans to Board of Public Welfare	3-112
		Personal property exempted from taxation	47-1208
<b>CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS</b>		Potomac water supplied	43-1533
See <b>RELIGIOUS SOCIETIES AND INSTITUTIONS</b>		Receiving Congressional appropriations	32-1007
Certificate of incorporation	29-601, 29-602	Trustees not to traffic with for gain	32-1007
Contents	29-601	Visitorial power of Commissioners of the District	32-1002
Recording with recorder of deeds	29-601	Receiving District money	32-1001
Change of name	29-604	Investigation by Commissioners of the District	32-1001
Dissolution	29-701—29-729	Visitation by Commissioners of the District	32-1001
Extension of corporate existence	29-604	Registration records	3-109
General powers	29-602	Regulations of admission	3-108



**CHARITABLE INSTITUTIONS—Continued**      Sec.

Rules and regulations concerning admission and administration      3-108

Superintendent      3-107

System of accounts      3-109

Under sectarian control      32-1008

    District charitable funds not to be given      32-1008

    Policy of government not to appropriate for      32-1008

Visitation by Commissioners of the District when appropriations are received      32-1001

Visitorial powers of Commissioners of the District      32-1002

Voluntary medical service, acceptance by Commissioners of the District      32-1006

**CHARITY**

Corporations for      29-601

Devises to charitable uses, rule against perpetuities inapplicable      45-102

Gifts to charitable uses, rules against perpetuities inapplicable      45-102

**CHARTS**

Preservation by surveyor      1-606

**CHATTEL INTERESTS**

Estates at will      45-804

Estates by sufferance      45-804

**CHATTEL MORTGAGES**

Instruments secured by, negotiable      28-106

Recordation      42-101, 42-102

**CHATTELS**

See **CHATTEL INTERESTS; CHATTEL MORTGAGES**

Execution on pledged chattels      15-212

Levy on in attachment and garnishment      16-310

Real

    Alienation      45-103

    Estate pur autre vie after death of grantee or devisee      45-805

    Estates for years      45-804

    Perpetuities, rule against applicable      45-103

**CHECKS**

See **NEGOTIABLE INSTRUMENTS; PROTEST**

Altered, liability of bank      28-1008

Application of law concerning bills of exchange      28-1002

Bank deposits of fiduciaries      28-2307—28-2310

Bank not liable until acceptance or certification      28-1007

Certification equivalent to acceptance      28-1005

Definition      28-1002

Drawers and indorsers discharged by certification      28-1006

Fiduciary drawing      28-2305, 28-2306

    Check payable to third person, rights and liabilities      28-2305

    Creditor of fiduciary taking check, liabilities      28-2305

    Made payable to and cashed by fiduciaries, liabilities      28-2306

Forged, liability of bank      28-1008

Funds not assigned      28-1007

**CHECKS—Continued**

Liability of bank on

    Altered check      28-1008

    Forged check      28-1008

    Raised check      28-1008

Making, drawing, uttering with insufficient funds      22-1410

Nonpayment in error, liability of bank      28-1009

Presentation for payment by notary public      1-509

Presentation within reasonable time required      28-1003

Presentment for payment after one year      28-1004

Protest by notary public      1-509

Raised, liability of bank      28-1008

**CHEMISTRY**

Dentist, examination for license      2-308

Healing arts, examination of applicants for license      2-108

Podiatry license examination      2-705

**CHERRIES**

Standard container      10-115

**CHESAPEAKE AND OHIO CANAL**

Exemption from taxation      47-807

**CHESTNUT STREET UNDERPASS**

Closing of grade crossing      7-523

Division of cost between railway company and District      7-523

Maintenance of right of way after construction by railroad company      7-523

**CHEVY CHASE PARKWAY**

Thirty-seventh Street, name changed in part      7-107 note

**CHICKENS**

See **POULTRY**

**CHIEF ENGINEER**

Fire department      4-402, 4-404

    Salary      4-405

**CHIEF ENGINEER OF ARMY**

Potomac River bank, partial control      9-101

**CHIEF JUSTICE**

Court of Appeals      11-201

United States District Court      11-301

    Salary      11-302

**CHIEF OF ENGINEERS**

See **WATER DEPARTMENT**

Control of water supply      43-1501—43-1538

**CHIEF OF SECRET SERVICE DIVISION**

Supervising officer of White House Police      4-301

**CHILD LABOR**

See **LABOR**

Board of Education

    Appointment of inspectors      36-225

    Dangerous places of employment, issuance of orders on      36-203

    Supervision of its child labor agents      36-227

Dangerous employment prohibited      36-203



CHILD LABOR—Continued		Sec.	CHILDREN—Continued		Sec.
Employer			Abused, commitment by Juvenile Court		32-209
Age of employee, proof of on demand		36-214	Annulment, child as plaintiff in		30-104
Notice of commencement and termina- tion of employment		36-213	Antenuptial children		18-106
Securing work or vacation permit		36-208	Birth returns		6-301—6-304
Enforcing agency		36-216	Blindness in infants, prevention		6-201—6-204
Inspection of places employing minors		36-216	Board of Public Welfare, supervision by		3-106, 3-114—3-118, 3-120—3-123, 3-125
Inspectors, appointment of		36-225	Antecedents of, investigation		3-118
Messengers, minors 18 to 21 employed as		36-206	Apprenticing		3-117
Minors 14 to 18		36-208	Children committed by courts		3-114
Employer to secure work or vacation per- mit		36-208	Children under 17		3-120, 3-121
Irregular or casual work		36-208	Contracts for care of dependent chil- dren		3-115
Minors over 10		36-201	Dependent and neglected children		3-116
Minors under 14		36-201	Discharge of child from guardianship		3-125
Minors under 16		36-204, 36-207	Environment of, investigation		3-118
Employment as performer prohibited		36-207	Feeble-minded children		3-114
Exhibition		36-207	Industrial home schools		3-106
Prohibited occupations		36-204	Inmates of National Training School for Boys		3-116
Minors under 18		36-202	Inmates of National Training School for Girls		3-122
Hours of employment		36-202	Juvenile offenders		3-116
List of minors employed, keeping		36-202	Placement of children in homes or insti- tutions		3-114, 3-123
Notice of regulations, posting		36-202	Temporary provision for care of chil- dren		3-116, 3-117
Prohibited occupations		36-205	Visitation of children under guardianship of board		3-117
Newspapers			Boys under 17, commitment to National Train- ing School for Boys		32-815
Badges, minors employed to have		36-218	Child labor		36-201—36-227
Hours of employment		36-218	Committing to private institution		11-915
Loitering around salesrooms, minors not to during school hours		36-224	Compulsory school attendance cases, Juvenile Court		31-213
Selling		36-201	Consent of child in adoption		16-202
Selling in streets		36-217	Contributing to delinquency		11-907
Stuffing		36-217	Cruelty to		
Penalties for violating regulation		36-215	Penalty		22-901
Prohibited occupations		36-204	Police Court, jurisdiction		11-603
Females under 18		36-205	Custodians of children		11-918
Minors under 16		36-204	Custody		
Minors under 18		36-205	By Juvenile Court		11-912
Selling merchandise to minors for public re- sale, penalty		36-223	In Juvenile Court actions		11-907
Separability provision		36-226	Pending divorce		16-410
Street trades		36-217—36-224	Dependent children, home care		32-701—32-710
Badges			Examination in Juvenile Court		
Contents		36-221	By physician		11-926
Issuance		36-220	By psychiatrist		11-926
Penalties		36-222	By psychologist		11-926
Vacation permits, issuance		36-212	Failure to provide for, penalty		22-902
Work or vacation permits		36-208—36-227	Feeble-minded		32-607, 32-608, 32-620
Application, contents		36-210	Admission to District Training School		32-607, 32-608
Contents		36-209	Convicted of crime, admission to District Training School		32-621
Evidence of age		36-211	Juvenile Court jurisdiction		32-620
Issuance by department of school attend- ance and work permits		36-209	Felonies by children of 16 or over		11-914
Record of applicants to be kept		36-209	Female under 16, prostitution		22-2704
<b>CHILDREN</b>			Girls under 18, custody of Association for Works of Mercy		32-101
See APPRENTICES; ASSOCIATION FOR WORKS OF MERCY; BLINDNESS IN INFANTS; BOARD OF PUBLIC WELFARE; CHILD LABOR; CRUELTY TO CHILDREN; DEPENDENT AND NEGLECTED CHILDREN; GUARDIAN AND WARD; JUVENILE COURT; JUVENILE OFFENDERS; MINORS; PARENT AND CHILD			Guardianship, in Juvenile Court		11-907
Abandoned infants needing immediate care, liability of District		3-111	Home care of dependent children		32-701—32-710
Absent parties, service of process by publica- tion		13-111	House of ill fame, found in, commitment		32-209



<b>CHILDREN—Continued</b>		Sec.	<b>CHOSSES IN ACTION</b>	Sec.
Illegitimate	18-107		Assignment	28-2501—28-2504
Distributee in intestate's estate	18-716		Bonds and undertakings	28-2502
Jurisdiction of Juvenile Court	11-907		Judgments and decrees for money	28-2501
Lost or abandoned, police matron, duties	4-117		Assignee may sue in own name	28-2501
Marriage, when consent of parent or guardian required	30-111		Filing in clerk's office	28-2501
National Training School, commitment of girls	32-908		Nonnegotiable contracts for payment of money	28-2503
New promise to pay on reaching majority, effect of statute of frauds	12-306		Obligations	28-2502
Nonresident party, service of process by publication	13-111		Conveyances in fraud of creditors	12-401
Not to suffer civil disabilities	11-915		General assignments	28-2504
Of Army, Navy, Marine Corps officers and men stationed outside District, admission to District schools without tuition	31-305		Nonassignable	28-2503
Paternity, jurisdiction of Juvenile Court	11-907		Claims against United States	28-2503
Placement in schools	31-1111		Salaries of public officers	28-2503
Places of detention	11-927			
Placing in detention home	11-912		<b>CHRISTIAN SCIENCE</b>	
Posthumous children			Exemption of practitioners from Healing Arts Practice Act	2-134
Birth defeats future estate dependent on parents' death without heirs, issue, or children	45-204			
Distribution of intestate's estate	18-714		<b>CHROMIUM</b>	
Take as though living at ancestor's death where future estates are limited to heirs, issue, or children	45-204		Poisonous compounds, sale, restrictions	2-612
Prostitution	22-2704			
Ratification on reaching majority, effect of statute of frauds	12-306		<b>CHURCHES</b>	
Religious faith considered in placements	11-918		Buildings and grounds exempted from taxation	47-801
Seduction by teacher, penalty	22-3002		Disturbing religious congregations, penalty	22-1114
Separate hearings in Juvenile Court	11-915		False personation as clergyman	22-1304
Service of process	13-105		Fireproof construction, when required	5-403
Taking into custody, Juvenile Court orders	11-912		Glebe houses exempted from taxation	47-801
Washington Humane Society	32-209		Income tax exemption	47-1502
Work or vacation permits	36-208—36-227		Parsonages exempted from taxation	47-801
			Pastoral residences exempted from taxation	47-801
			Potomac water supplied	43-1533
			Rectories exempted from taxation	47-801
			Residence streets, height	5-405
			Saint Mark's Protestant Episcopal Church, property exempted from taxation	47-813
			<b>CINDERS</b>	
			Accumulation prohibited	6-801
			<b>CIRCUIT COURT TERM</b>	
			See UNITED STATES DISTRICT COURT	
			Common-law civil cases tried and determined	11-316
			Crier for, appointment	11-312
			Messenger for, appointment	11-312
			Special term of United States District Court	11-311
			<b>CIRCUSES</b>	
			Transported by railroad, license fee	47-2325
			Transported by truck or wagon, license fee	47-2325
			<b>CISTERNS</b>	
			Uncovered and dangerous, abatement as nuisance	5-504
			<b>CITIZENS' ASSOCIATIONS</b>	
			Income tax, when exempted	47-1502
			<b>CITIZENSHIP</b>	
			Civilian Commissioners of District	1-206
			<b>CIVIL DISABILITIES</b>	
			Not to be imposed on children	11-915
			<b>CIVILIAN COMMISSIONERS OF DISTRICT</b>	
			Appointment by President	1-201
			Required to be citizens of United States	1-206
			Residence requirement	1-206
			Term of Office	1-209
<b>CHILDREN'S PLAYGROUND</b>				
See GLOVER PARKWAY AND CHILDREN'S PLAYGROUND				
<b>CHILDREN'S TUBERCULOSIS SANATORIUM</b>				
See HOSPITALS AND ASYLUMS				
<b>CHIMNEYS</b>				
Height, construction regulation	5-405			
<b>CHIPMUNKS</b>				
See GAME AND FISH LAWS				
<b>CHIROPODY</b>				
See PODIATRY				
<b>CHIROPRACTORS</b>				
See HEALING ARTS PRACTICE ACT				
Board of Examiners, examination of applicants for license	2-106, 2-114—2-117			
Reciprocity as basis for issuing license to practice	2-121			
Relicensing of licensees under prior law	2-120			
<b>CHLORAL HYDRATE</b>				
Sale, prescription	2-610, 2-611			
<b>CHLOROFORM</b>				
Sale, restrictions	2-612			



**CIVIL PROCEDURE**

See EVIDENCE; TRIALS; VENUE; WITNESSES

Abatement and revivor	12-101—12-116
Actions	16-101—16-2005
Appeals	17-101—17-104
Bills of exception	11-318—11-321
Executions	15-201, 15-218
Fees and costs	11-1501—11-1519
Judgments and decrees	15-101—15-111
Limitation of actions	12-201—12-208
Pleading	13-201—13-222
Process	13-101—13-116
To be in English language	13-202
Trial by court of civil cases	11-317, 11-318
Bill of exceptions, sealing, British statute	11-321
Trial by jury of civil cases	11-319, 11-320

**CIVIL SERVICE**

Application to District employees, school officers and teachers excepted	1-217
Fire Department, appointments and promotions	4-402
Police Department personnel	4-103
Assistant superintendents excepted	4-103
Inspectors excepted	4-103
Major and superintendent excepted	4-103

**CLAIMS AGAINST DISTRICT**

Actions on, service of process	1-901
Settlement by Commissioners	1-902, 1-904, 1-905
Appropriation for payment	1-904
Cases subject to	1-902
Effective date of act	1-905
Limitation on amount payable	1-904
Pending claims, right to settle	1-905
Report to Congress	1-904
Tax refunds, payment by Commissioners	1-903
Tort actions, compromise and settlement	1-902

**CLAIRVOYANTS**

See FORTUNE TELLERS

**CLEANING AND DYEING**

Motor fuel used for, refund of tax	47-1910
------------------------------------	---------

**CLERGY**

Impersonation	22-1304
Jury service, exemption	11-1420
Marriages, authority to celebrate	30-106
Rental value of dwelling exempted from income tax	47-1504

**CLERK**See CLERK OF UNITED STATES DISTRICT COURT;  
COURT OF APPEALS

Court of Appeals	11-204
Health officer	6-107, 6-108
Juvenile Court	11-922
Municipal Court	11-701, 11-708
Police Court	11-620

**CLERK OF UNITED STATES DISTRICT COURT**

Acknowledgments, taking	11-402
Administering oaths	11-402
Appointment	11-403

Sec.

**CLERK OF UNITED STATES DISTRICT COURT—Continued**

Assistant clerks	11-401
Appointment by clerk	11-401
Compensation	11-401
Powers and duties	11-401
Power to appoint	11-312
Signing of documents, form	11-401
Bond	11-401
Court's power to appoint	11-312
Criminal Court term, duty to attend	11-323
Expenses	11-403
Fees, apportionment between District and United States	11-330
Fines collected, apportionment between District and United States	11-330
Notaries public, custody of records and papers on vacation of office	1-516
Oath	11-401
Optometry licenses, recording	2-513
Certified copies	2-513
Fee	2-513
Salary	11-403
Seal of notary, impression deposited with	1-506
Signature of notary filed with	1-506

**COAL**

Delivery ticket	10-111
Original and duplicate required	10-111
Surrender of original to superintendent or inspector upon demand	10-111
Name of seller displayed on vehicle making delivery	10-111
Requiring weighing while on way for delivery	10-111
Sale by weight, long ton used	10-108
Sale by weight required	10-111
Sale in quantities of less than ton, regulation	10-111
Verification of weight of load	10-111
Wetting before weighing prohibited	10-111

**COCAINE**

See NARCOTIC DRUGS

Coca leaves derivative	33-401
Record kept of receipts and sales	33-411
Sale, prescription	2-610, 2-611

**COCA LEAVES**

See NARCOTIC DRUGS

Includes cocaine or ecgonine	33-401
Record kept of leaves received or produced	33-411

**COCK FIGHTING**

See CRUELTY TO ANIMALS

Keeping or using place	22-809
Penalty	22-810

**CODEINE**

See NARCOTIC DRUGS

Exempted medical preparations	33-410
Included in term "opium"	33-401
Sale by manufacturer or wholesaler, written orders	33-405

**CODE OF THE DISTRICT OF COLUMBIA**

Cited as "D. C. Code"	49-102
Compilation and distribution	49-101—49-111
Additional quotas for Congress	49-105



**CODE OF THE DISTRICT OF COLUMBIA—** Sec.

Continued

Compilation and distribution—Continued	
Consolidation and codification of general and permanent laws	49-101
Copies as conclusive evidence of originals	49-103
Curtailment of number of printed copies	49-103
Dispensing with printed supplements	49-103
Distribution by Superintendent of Documents	49-104
Establishes prima facie the laws of the District	49-102
Form and style of Code and ancillaries	49-107
Committee on Revision of the Laws to prescribe	49-107
Librarian of Congress to cooperate in preparing	49-107
Functions of Committee on Revision of the Laws may be vested in another agency	49-109
Laws excepted	49-101
Manner of citing	49-102
New editions	49-101
Distributed in same manner as supplements	49-101
Manner of citing	49-102
Not oftener than once in five years	49-101
Supplements to, contents	49-101
Preparation under supervision of Committee on Revision of the Laws, House of Representatives	49-101
Printing, binding, and distribution under direction of Joint Committee on Printing	49-109
Publication of Code and supplements as separate parts of Statutes at Large	49-104
Quota for personal use of members of Congress, limitation	49-106
Sale of surplus of compilations	49-111
Slip and pamphlet copies need not be distributed	49-104
Supplements for each session of Congress	49-101
Supplements, manner of citing	49-102
Construction	49-201—49-207
“Administrator” includes executor	49-205
“Any officer” includes any person authorized by law, exception	49-204
“Executor” includes administrator	49-205
“Insane person” includes every idiot, non compos and lunatic	49-207
“Lunatic” includes every idiot, non compos and insane person	49-207
Masculine gender includes all genders, exception	49-203
Oath, affirmation may be substituted	49-206
“Persons” includes partnerships and corporations, exception	49-204
Rule stated	49-201
Words importing singular number include plural	49-202
Effect on British Statutes in force in Maryland in 1801	49-301
Effect on common law	49-301

**CODE OF THE DISTRICT OF COLUMBIA—** Sec.

Continued

Effect on general acts of Congress	49-301
Effect on principles of equity and admiralty	49-301
Establishes prima facie the laws of the District	49-102
New editions cited as “D. C. Code, ed. —”	49-102
Prior laws remaining in force	49-301—49-304
Acts of Congress applicable to District and other federal jurisdictions	49-301
Acts of Congress not locally inapplicable	49-301
Acts relating to organization and power of vestries and governing bodies of religious organizations	49-303
Certain British statutes	49-301
Common law, not inconsistent and unreplaced	49-301
Equity and admiralty principles	49-301
Laws and ordinances of the city of Washington, when	49-302
Laws and ordinances of the District Levy Court, when	49-302
Repeal provisions of 1901 Code	49-304
Supplements cited as “D. C. Code, Sup. —”	49-102

**CODES**

Health Code, preparation and publication authorized	4-177
Police Code, preparation and publication authorized	4-177, 4-178

**COERCION**

Procuring marriage by, as ground for annulment	16-403
--	--------

**COIN-IN-SLOT MACHINE**See **SLOT MACHINES****COKE**

Delivery ticket	10-111
Original and duplicate required	10-111
Surrender of original to superintendent or inspector upon demand	10-111
Name of seller displayed on vehicle making delivery	10-111
Sale by weight required	10-111
Sale in quantities of less than ton, regulation	10-111
Verification of weight of load	10-111
Weighing required while on way for delivery	10-111
Wetting before weighing prohibited	10-111

**COLFAX STREET**

Closing in part authorized, consent of property-owners	7-123
--	-------

**COLLATERAL SECURITY**

Sale authorized, negotiability of instrument secured	28-106
--	--------

**COLLECTOR OF TAXES**

Account books	47-305
Contents	47-305
Inspection by officers authorized by Board of Commissioners	47-305
Bond	47-302
Cashier in collector's office	47-304
Bond	47-304
Duties	47-304



COLLECTOR OF TAXES—Continued	Sec.	COLUMBIA INSTITUTION FOR THE DEAF—Continued	Sec.
Collection of all taxes required	47-301	Degrees, power to confer	31-1002
Daily deposit of collections in Treasury	47-301	Diplomas or certificates	31-1002
Deposits to "miscellaneous trust-fund deposits"	47-311	Establishment	31-1001
Deputy collector	47-303	Expenses of students from District	31-1010
Bond	47-303	Government directors	31-1006, 31-1007
Duties	47-303	Appointment	31-1006
Disposition of surplus proceeds of tax sales	47-1006	Tenure	31-1006, 31-1007
Duties in sale of chattels to collect personal taxes	47-1402	Indigent blind to be reported	31-1019
Extending time for payment of taxes on owner occupied family dwellings	47-902	Itemized report of expenses	31-1018
Income tax, duties regarding	47-1501—47-1543	Management	31-1005
Income tax payable to	47-1526	Municipal Court judges to report deaf and dumb persons	31-1015
Inspecting motor fuel importer's records	47-1907	Not an institution of charity	31-1008
Purchasing real property at tax sale for District	47-1002	Number and compensation of employees to be included in annual budget	31-1014
Receipts for income tax payments	47-1526	Obligation of deed of transfer of property of Male Orphan Asylum Society	31-1003
Record of assets of District	47-308	Obligation of deed of transfer of property of Washington's Manual Labor School	31-1003
Commissioners of the District, authorizing omission of uncollectible items	47-308	President and directors to report annually to Secretary of Interior	31-1017
Omission of uncollectible taxes and assessments	47-308	Purchase of supplies	31-1023
Taxes and assessments omitted, taxpayers still liable	47-308	Real property, limitation on holding	31-1001
Refunding motor fuel tax	47-1910	Report of Convention of American Instructors of the Deaf	31-1024
Refunding payments for licenses refused	47-1017	Secretary of Interior to supervise	31-1022
Report of tax sales	47-1006	Students from states and territories	31-1012
Sale of chattels distrained for personal taxes	47-1301, 47-1302	Admission of limited number	31-1012
Sale of land levied upon for personal taxes	47-1301—47-1305	Number from one state or territory limited	31-1013
Service sewer assessments, collections to be credited to appropriations	43-1516	United States not to pay for support	31-1012
Settlement of accounts	47-309	Superintendent to report to Congress	31-1016
Statement of total assessments and total taxes		Title to certain real property	31-1021
Receipt in triplicate	47-601	Transfer of colored deaf-mute children	31-1011
Responsibility on bond for taxes included	47-601	Transfer of feeble-minded mutes to state institution	31-1009
Water-main assessments, collections to be credited to appropriations	43-1516	Use of property	31-1004
<b>COLLECTORS</b>		<b>COMFORT STATIONS</b>	
See EXECUTORS AND ADMINISTRATORS		District property, injuring, penalty	22-3111
<b>COLLEGES AND UNIVERSITIES</b>		Establishment authorized	8-139
See EDUCATIONAL AND RELIGIOUS INSTITUTIONS; FIRE ESCAPES AND SAFETY PROVISIONS; INSTITUTIONS OF LEARNING		Jurisdiction over reservation in which located, transfer	8-139
Fire escapes and safety provisions	5-301—5-315	Location	8-139
<b>COLUMBIA ENGINE HOUSE</b>		Number authorized	8-139
Engine house, use authorized	4-412	Reservation number 8, public convenience station	8-138
<b>COLUMBIA HOSPITAL FOR WOMEN AND LYING-IN ASYLUM</b>		Rules and regulations for management, power to adopt	8-140
See HOSPITALS AND ASYLUMS		<b>COMMERCIAL INSTRUMENTS AND TRANSACTIONS</b>	
<b>COLUMBIA INSTITUTION FOR THE DEAF</b>		See ASSIGNMENTS; ASSIGNMENTS FOR BENEFIT OF CREDITORS; BONDS AND UNDERTAKINGS; BULK SALES; COMPUTATION OF TIME; FIDUCIARIES; INTEREST AND USURY; NEGOTIABLE INSTRUMENTS; SALES, UNIFORM ACT; WAREHOUSE RECEIPTS	
See EDUCATION		<b>COMMISSION</b>	
Accounts, settling with General Accounting Office	31-1007	Issuance to appointive officers	1-220
Admission of deaf mutes from District	31-1008	<b>COMMISSIONER OF EDUCATION</b>	
Alienation of property	31-1004	Ex officio member of Healing Arts Licensure Commission	2-103
Constitution, alteration	31-1005		
Control of disbursements	31-1007		
Corporate powers, general	31-1001		



COMMISSIONERS OF DEEDS		Sec.	COMMISSIONERS OF DISTRICT OF CO-		Sec.
Acknowledgment of deeds, power to take		1-401	LUMBIA—Continued		
Appointment by President		1-401	Board of Zoning Adjustment, appointment		5-420
Deposition, power to take		1-401	Boiler inspector and assistant, employment		1-703
Full faith and credit given act		1-401	Boilers		
Oaths, power to administer		1-401	Exemption from inspection		1-705
Removal from office		1-402	Inspection fees, power to fix		1-710
Term of office		1-402	Bonding of officers and employees		1-213
			Determination, powers of Commissioners		1-213
			Premiums on bonds, payment		1-213
COMMISSIONERS OF DISTRICT OF CO-			Boxing Commission, appointment		2-1201
LUMBIA			Bridges, control over		7-102
See ALCOHOLIC BEVERAGES; EMINENT DOMAIN;			Regulations		7-501
HIGHWAYS; STREETS AND OTHER WAYS			Building inspectors' fees, determination by		
Abolition of offices, power vested in Commis-			commissioner		5-429
sion		1-216	Building lines, establishment		5-201
Acquisition of lands for District uses		16-601	Building regulations		1-228
Acquisition of lands in excess of needs		16-612	Authority to adopt		1-228
Alley dwellings, slum-clearance plans and			Force and effect		1-228
plats, approval		5-104	Sale and exchange of copies		49-110
Alleys, police regulations		1-623	Business streets, designation		8-108
Annual report to Congress		1-238	Civilian commissioners		1-201, 1-206
Illustration prohibited		1-239	Citizenship		1-206
Printing discontinued, original copy kept			Residence requirement		1-206
on file		1-240	Term of office		1-209
Appeals to by health, accident and life in-			Commissioning of officers appointed		1-220
surance companies		35-202	Consolidation of offices		1-216
Appointment by President		1-201	Constables, Commissioners to have powers of,		
Appointments to office by Commissioners		1-216	exception		4-136
Approval of valuations by board of equaliza-			Contracts		1-801—1-803
tion and review		47-709	Consideration and approval		1-214
Assistant assessors, board of		47-604	Filed in office of secretary of District		1-803
Appointment		47-604	Limitation on powers		1-801
Clerk, appointment		47-604	Personal interest in contracts, contracts		
Conveyance to view property for assess-			declared void		1-802
ment to be furnished		47-704	Required to be in writing		1-803
Maps, books, surveys and plats to be			Signed by parties		1-803
furnished		47-704	Control of water department		43-1501—43-1538
Assistant to Engineer Commissioner		1-212	Deeds, consideration and approval		1-214
Detailed from Engineer Corps by Presi-			Deeds under real property tax sales		47-1003
dent		1-212	Department of Insurance, supervision		35-101
Duties		1-212	Designation of property for assessment and		
Junior in rank to Engineer Commissioner		1-212	taxation, authority		47-401—47-408
Number		1-212	Disposition of proceeds of sales of building,		
Authority over public libraries		37-101	police, plumbing and municipal regula-		
Authority over Real Estate Commission		45-1403	tion copies		49-110
Authorizing omission of uncollectible items			Dogs		1-224, 1-230
from record of assets of District		47-308	Power to regulate keeping and running at		
Becoming surety for contractors prohibited		1-210	large		1-224
Board of Accountancy, appointment		2-903	Power to require muzzling		1-230
Board of Barber Examiners, appointment		2-1103	Domestic animals, power to provide for im-		
Board of Cosmetology			pounding		1-230
Appeal to Commission from action of			Droves of animals in streets, power to prohibit		1-224
Board		2-1305	Duties as police department head		4-119
Appointment		2-1302	Duties in retirement of public school		
Board of Dental Examiners, appointment		2-301	teachers		31-701—31-720
Board of Examiners and Registrars of Archi-			Electrical wiring regulations		1-719
tects, appointment		2-1001	Elevator, regulation for construction and op-		
Board of Examiners in Veterinary Medicine			eration, penalty		1-229
Appeal from to Commission		2-806	Employees of board of personal tax appraisers,		
Appointment		2-801	appointment		47-1214
Board of Examiners of Steam and Other Op-			Employees, power to reduce		1-216
erating Engineers, appointment		2-1502	Employing personnel in excess of legal au-		
Board of Pharmacy, appointment		2-607	thority prohibited, exception		1-215
Board of Podiatry Examiners, appointment		2-701			
Board of Public Welfare, appointment		3-103			



COMMISSIONERS OF DISTRICT OF CO-	Sec.	COMMISSIONERS OF DISTRICT OF CO-	Sec.
LUMBIA—Continued		LUMBIA—Continued	
Engineer Commissioner	1-201—1-205	Licenses—Continued	
Absence, performance of duties by senior		Regulating power	47-2345
or junior officer of Engineer Corps	1-211	Revocation, power	47-2345
Appointed from Corps of Engineers of		Licensing private employment	
United States Army	1-201	agencies	47-2101—47-2111
Army rank	1-202	Lights, power to maintain outside city limits	1-234
Compensation	1-204	Medical and dental college supervision	31-901—31-905
Detailed by President to commission	1-203	Minor offenses, jurisdiction over	1-224
Not considered to hold civil office	1-205	Municipal regulations, sale and exchange of	
Not required to perform other duties	1-203	copies	49-110
Qualifications	1-202	Noises, power to regulate and prohibit	1-224
Estimates to include library maintenance and		Number	1-201
buildings	37-106	Nurses Examining Board, appointment	2-402
Exchange of old equipment in purchase of new		Nurses, petition for revocation or suspension of	
articles	1-819	certificate	2-407
Execution of laws	1-220	Oath of members	1-208
Executive officers of District	1-103, 1-208	Old-age assistance, authority over	46-203
Executive power vested in	1-218	Optometry Board, appointment	2-503
Explosives	1-224, 1-227	Optometry, educational standards, power to	
Power to prohibit use	1-224	change	2-512
Use of within District, power to regulate	1-227	Ordering refund of erroneous payment of	
Filing mandamus action to compel filing of		taxes	40-1016
personal property tax return	47-1209	Ordinances, rules and regulations of Board of	
Firearms, power to regulate	1-227	Health, power to repeal	6-114
Fire Department		Outdoor signs	1-231—1-233
Assignment and location of property	4-401	Fee for license	1-232
Exclusive jurisdiction over department	4-402	Force and effect of regulations	1-231
Fire-plugs and hydrants, power to erect	43-1501	License requirements	1-232
Fireworks, power to prohibit use	1-224	Penal provision of regulations, effective	
Fixing date for real property tax sales	47-1001	date	1-233
Garbage regulations, enforcement	4-119	Penalty for violating regulations	1-233
Regulations for collection and disposal	6-501	Publication of regulations	1-233
Hack stands, power to locate	1-221	Regulations, power to adopt and enforce	1-231
Establishment and regulation of charges	1-224	Rejection of application for license	1-232
Health officer, appointment	6-101	Revocation of license	1-232
Health regulations		Owners' financial responsibility rules and	
Power to adopt	6-114	regulations	40-414
Power to make, prevention and control of		Papers and other documents, consideration	
diseases	6-118	and approval	1-214
Hearings for protests on special assessments	47-1101	Pardons, power to grant	1-220
Highways, control over	7-102	Parking meters, authority for	40-616
Hypothecation of taxes prohibited	1-219	Pawn shops, power to provide for inspection	1-224
Improvement of streets, duties	7-605, 7-608	Penalties, power to prescribe for violation of	
Income tax, authority over	47-1501—47-1543	regulation	1-224
Inflammable substances, power to regulate		Plats and surveys, recording, order for re-	
storage	1-224	quired	1-613, 1-621
Inspectors for law regarding employment of		Pleadings, consideration and approval	1-214
women, appointment	36-306	Plumbing Board, appointment	2-1401
Insurance of District property	1-816	Plumbing regulations	
Interest and penalties on taxes and assess-		Power to adopt	1-725
ments, authority to waive	47-307	Sale and exchange of copies	49-110
Investigating charitable institutions receiving		Police and firemen's pension relief, determina-	
District funds	32-1001	tion of amount	4-505
Investigation of municipal matters	1-237	Police and firemen's retiring and relief board	4-510
Law made applicable	1-237	Designation of appointive members	4-510
Oaths, power to administer	1-237	Report of findings, approval or disap-	
Junk shops, power to provide for inspection	1-224	proval	4-510
Licenses	47-2344	Police Department	
Abolition, power	47-2344	Oaths, power to administer	4-123
Changing fees, power	47-2344	Personnel, appointments	
Control over	47-2301—47-2350	Age limits, determination	4-107
Creation, power	47-2344	Assignment to duty	4-103



COMMISSIONERS OF DISTRICT OF CO-	Sec.
LUMBIA—Continued	
Police Department—Continued	
Rules and regulations for government, power to adopt	4-121
Trial boards, review of findings	4-122
Police regulations	
Effective date of penalty	1-225
Power to adopt and enforce	1-224
Protection of life, health, and property	1-226
Publication	1-225
Poultry, power to regulate keeping and running at large	1-224
Power to appoint executioner, assistant	23-702
Power to provide death chamber, apparatus	23-702
President of Board	1-207
Ex officio member of Healing Arts Licensure Commission	2-103
Selected annually or on vacancy occurring	1-207
Private hospitals and asylums, rules and regulations	32-304
Projectiles, regulations relative to	1-227
Property tax rates, authority to fix	47-501
Public auctions, control over	47-2201—47-2208
Public contractors becoming surety for District officers prohibited	1-210
Public scales, location and licensing	10-128
Quarry, operation, limitation on period of time	1-811
Quorum	1-211
Reassessing real property when assessments are voided by court	47-721
Recording of action taken on contracts, deeds, and other documents and papers	1-214
Registration of motor vehicles	40-102
Regulation of planning of grounds and lands in District	1-613
Removal of officers and employees	1-216
Reporting assignments to markets with annual budget estimates	47-205
Requesting income tax data from Bureau of Internal Revenue	47-1528
Requisitioning advance of funds from the Treasury	47-2412
Respite, power to grant	1-220
Rewards for police services, acceptance prohibited	4-129
Rubbish and litter, deposit in streets or on sidewalks, power to prohibit	1-224
Rule-making power, general provisions	1-224—1-231
Rules and regulations	
Gross income deductions in income tax returns	47-1505
Inheritance and estate taxes	47-1618
Motor fuel tax law	47-1916
Sales on installment bases in income tax returns	47-1513
Taxation and fiscal affairs	47-2502
Traffic	40-603
Sale of property unfit for service, proceeds credited to appropriation	1-818
Sale of real property belonging to District	9-301—9-306
Sanitary inspectors, appointments	6-104

COMMISSIONERS OF DISTRICT OF CO-	Sec.
LUMBIA—Continued	
Second-hand clothing stores, power to provide for inspection	1-224
Secretary of board	1-214
Contracts, power to execute	1-214
Deeds, power to execute	1-214
Papers and other documents, power to execute	1-214
Pleadings, power to sign	1-214
Service of process on	1-901
Settlement of accounts	47-309
Settlement of claims and suits	1-902
Appropriations for payment	1-904
Effective date of act	1-905
Limitation on amount payable	1-904
Pending claims, right to settle	1-905
Report to Congress	1-904
Tax refund	1-903
Sewers, control over	7-101
Smallpox hospitals, rules and regulations	32-306
Smoke nuisance, control regulations	6-802
Special assessments, abating, reducing or adjusting	47-1102
Special reports, printing discontinued, original copy kept on file	1-240
Specifications for weights and measures, right to establish	10-127
Street lighting, hours, power to regulate	7-707
Street parking, control of	5-205
Streets and other ways, control over	7-101
Streets, cleaning and sweeping	1-235
Costs sustained as ordinary municipal expense	1-235
Declared necessary municipal objects	1-235
Sale of street sweepings	1-236
Street vendors, power concerning	1-224
Subdivisions, approval	1-613
Subdivisions, regulatory powers	1-613
Superintendent of Insurance, appointment	35-101
Superintendent of weights, measures, and markets, appointment	10-101
Supervising enforcement of inheritance and estate taxes	47-1618
Surveyor, appointment	1-601
Surveyor's fees, power to prescribe	1-629
Taxation questions, reference to board of tax appeals	47-2412
Taxes, anticipation prohibited	1-219
Taxicab stands	1-221—1-223
Establishment near railroad station	1-222
Power to locate	1-221
Rates and charges, power to determine	1-222, 1-223
Tolerances, right to establish with reference to weights and measures	10-127
Transfers of jurisdiction to Director of National Park Service	8-135
Visiting charitable institutions receiving District funds	32-1001
Visitorial power over eleemosynary institutions	32-1002
Children's Hospital	32-1002
Columbia Hospital for Women and Lying-in Asylum	32-1002



<b>COMMISSIONERS OF DISTRICT OF CO-</b>	<b>Sec.</b>
<b>LUMBIA—Continued</b>	
Visitorial power over eleemosynary institu-	
tions—Continued	
German Orphan Asylum	32-1002
Little Sisters of the Poor	32-1002
National Association for Colored Women	
and Children	32-1002
Saint Ann's Infant Asylum	32-1002
Women's Christian Association	32-1002
Volunteer medical services, power to accept	
	1-215 note
Volunteer services, acceptance prohibited, ex-	
ception	1-215
Water-mains and pipes, power to lay	43-1501
Water-rates, authority to collect in advance	43-1521
Water supply, rules and regulations	43-1503
Weapons, regulations relative to, power to	
adopt	1-227
Weighmasters, licensing, fees, determination	10-128
Wharf property, control over	9-101, 9-102
Zoning Advisory Council, designation of mem-	
bers	5-417
Zoning Commission, ex officio members of	5-412
Zoning regulations	
Enforcement	5-423
Nonconflicting municipal regulations,	
power to adopt	5-423
<b>COMMISSION MERCHANTS</b>	
Dealing in food or food products, license	47-2327
<b>COMMISSION OF FINE ARTS</b>	
Approval or disapproval of plans, buildings	
fronting certain Government property	5-410
Buildings fronting certain Government prop-	
erty, approval or disapproval of plans, fail-	
ure to report, approval presumed	5-410
Canal Street, building fronting, approval of	
plan	7-1219
Park purposes, acquisition of land, advice re-	
quested	8-102
<b>COMMISSION ON LICENSURE</b>	
See HEALING ARTS PRACTICE ACT	
<b>COMMISSION ON MENTAL HEALTH</b>	
See INSANE PERSONS	
<b>COMMITTEE ON REVISION OF THE LAWS,</b>	
<b>HOUSE OF REPRESENTATIVES</b>	
Prescribing form and style of Code	49-107
Supervising compilation of Code	49-101
<b>COMMITTEES ON THE DISTRICT OF CO-</b>	
<b>LUMBIA</b>	
Chairmen, member of National Capital Park	
and Planning Commission	8-101
<b>COMMODORE BARNEY CIRCLE</b>	
Public reservations Nos. 55 and 56, name	
changed	7-107 note
<b>COMMON CARRIERS</b>	
See PUBLIC UTILITIES; RAILROADS; STREET RAIL-	
WAYS; TAXICABS; TAXICAB STANDS	
Definition	43-111

<b>COMMON CARRIERS—Continued</b>	<b>Sec.</b>
Employers' Liability Act	44-401—44-405
Accepting indemnity not to bar recovery	44-403
Accepting insurance benefits not to bar	
recovery	44-403
Accepting relief benefits not to bar re-	
covery	44-403
Contributory negligence as defense	44-402
Not a bar to recovery	44-402
Question for jury	44-402
Employment contracts not bar to re-	
covery	44-403
Indemnity contracts not bar to recov-	
ery	44-403
Insurance contracts not bar to recovery	44-403
Liability for defective equipment	44-401
Liability of carrier for negligence of	
agents	44-401
Negligence and contributory negligence	
questions for jury	44-402
Railroad safety-appliance law not af-	
fectd	44-405
Relief benefit contracts not bar to re-	
covery	44-403
Set-off of employers contribution to in-	
surance, relief benefits or indemnity	44-403
Suit to be brought within one year	44-404
Liability under plant disease and insect pests	
control law limited	6-905
Sale of unclaimed freight	44-101—44-103
<b>COMMON LAW</b>	
See ABATEMENT AND REVIVOR	
Actions on accounts	16-102
Civil cases tried at Circuit Court term of	
United States District Court	11-316
Offenses against, penalty	22-107
<b>COMMUNICABLE AND PREVENTABLE</b>	
<b>DISEASES</b>	
Regulations for control	6-118, 6-119
<b>COMMUNITY CENTER</b>	
Authorized	31-605
<b>COMMUNITY CHEST OR FUND</b>	
Contributions to, deductible on income tax	47-1505
Exemption from income tax	47-1502
<b>COMPENSATION</b>	
See COMMON CARRIERS; LABOR; OFFICERS AND	
EMPLOYEES OF DISTRICT; SALARIES; WORK-	
MEN'S COMPENSATION	
Common Carrier Employers' Liability Act	
	44-401—44-405
Injured employees of District, budget estimates	1-311
Workmen's compensation	36-501, 36-502
<b>COMPETENCY</b>	
See EXECUTORS AND ADMINISTRATORS	
<b>COMPLAINT-BOOKS</b>	
Contents, name and residence of complainant,	
Police Department	4-134
Open to public inspection	4-135
<b>COMPLAINTS</b>	
See PLEADINGS	



<b>COMPOUNDING FELONY</b>	Sec.	<b>CONSIDERATION—Continued</b>	Sec.
Police and private detectives	4-175	Negotiable instruments	28-201—28-206
<b>COMPROMISE</b>		Antecedent debt	28-202
Claims against District	1-902	Issuance for value presumed	28-201
<b>COMPTROLLER OF THE CURRENCY</b>		Partial failure when a defense	28-205
See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>		Preexisting debt	28-202
		"Value" defined	28-202
<b>COMPULSORY EDUCATION</b>		<b>CONSOLIDATION</b>	
Children of school age	31-201—31-213	Joint obligations	13-401
<b>COMPUTATION OF TIME</b>		<b>CONSPIRACIES</b>	
Calendar established	28-2801	District Training School, procuring improper commitment	32-619
Leap year	28-2802, 28-2803	Feeble-minded, to have person adjudged	32-619
<b>CONCILIATION</b>		Firemen conspiring to interfere with efficiency of department, penalty	4-407
See <b>MUNICIPAL COURT</b>		Jurisdiction	
<b>CONCORD AVENUE</b>		Juvenile Court	11-909
Eminent domain, assessment of benefits and damages	7-219	Police Court	11-602
Dismissal of proceedings, discretion, damages exceeding benefits	7-219	Police Department, interference with operation of	4-125
Oregon Avenue, name changed	7-107 note		
<b>CONDEMNATION</b>		<b>CONSTABLES</b>	
See <b>ALLEY DWELLINGS; EMINENT DOMAIN; INSANITARY BUILDINGS</b>		Commissioners to have powers of, exception	4-136
Alley dwellings	5-103	Police Department members possess powers of, exception	4-136
Depreciation or damage exceeding one-half original value	5-101	<b>CONSTITUTIONALITY</b>	
False weights and measures	10-103	Fire and Casualty Act	35-1350
Special assessments, payment	47-1104	Life Insurance Act	35-803
<b>CONDITIONAL INDORSEMENT</b>		Savings clause of Motor Vehicle Owners' Financial Responsibility Act	40-416
See <b>NEGOTIABLE INSTRUMENTS</b>			
<b>CONDITIONAL SALE</b>		<b>CONSTRUCTION OF INSTRUMENTS</b>	
Recordation	42-103	Real property conveyances	45-201—45-205
Removing property subject to, penalty	22-1406	<b>CONTAGIOUS AND INFECTIOUS DISEASES</b>	
<b>CONDUIT ROAD</b>		See <b>HOSPITALS AND ASYLUMS</b>	
Assessment of property for public improvement	7-1201	Dairies reporting	33-312
Jurisdiction and control vested in Commissioners	7-1201	Mattresses, renovation, restrictions	6-602
Municipal laws and regulations, application,	7-1201	<b>CONTAINERS</b>	
<b>CONFESSION OF JUDGMENT</b>		Beverage bottles, registration	48-101, 48-102
Negotiability of instruments authorized	28-106	Milk beverage containers, registration	48-301—48-307
<b>CONFISCATION</b>		Milk containers, registration	48-201—48-211
Unapproved weighing and measuring devices	10-103	<b>CONTEMPT OF COURT</b>	
<b>CONGRESS</b>		Board of Dental Examiners calling witnesses	2-304
Parking zones for members	40-604	Board of Examiners and Registrars and Architects, witnesses	2-1029
<b>CONNECTICUT AVENUE BRIDGE OVER KLINGLE VALLEY</b>		Board of Pharmacy, witnesses	2-606
Paving between tracks, payment of cost	7-513	Board of Podiatry Examiners, disobedient witnesses	2-703
System for propelling street cars, installation by company	7-513	Buildings erected or altered in violation of law, injunction	5-408
<b>CONSENT</b>		Equity, enforcement of decrees	11-326
Adoption, consents required	16-202	Imprisonment of defendant, restriction	11-326
To reference of questions of law and fact	16-1701	Healing arts, hearing on refusal to issue license	2-129
<b>CONSERVATORS</b>		Juvenile Court,	11-911, 11-933
Fiduciaries under income tax law	47-1543	Penalty	11-933
<b>CONSIDERATION</b>		Municipal Court	11-740
Illegal, causing defective title to negotiable instrument	28-405	Police Court	11-606
		<b>CONTINUANCE</b>	
		Amendment of pleadings as basis for	13-302



**CONTRACTORS**

Sec.

Liens	38-101—38-126
Laborer's	38-103—38-122
Materialmen's	38-103—38-122
Subcontractor's	38-103—38-122

**CONTRACTS**

See COMMISSIONERS OF DISTRICT OF COLUMBIA; JOINT CONTRACTS; PUBLIC BUILDINGS AND WORKS

Auction sales, under Uniform Sales Act	28-1205
Breach of contract, attachment and garnishment	16-301
Bucket shop, definition of contract in	22-1509
Capacity to buy and sell	28-1102
Commissioners' contracts required to be in writing	1-803
Copy filed in office of secretary of District	1-803
Signature by parties	1-803
Commissioners personally interested, contract void	1-803
District entering into, execution, procedure	1-214
District's power to make	1-102
Gambling and gaming	16-701, 16-703, 16-706, 16-707
Recovery of losses	16-702, 16-706, 16-707
Repayment, defendant relieved by	16-703
Void	16-701, 16-707
Joinder of counts with tort counts	13-208
Lien on negotiable instrument, effect	28-204
Limitation of actions	12-201
Limitation on powers of Commissioners	1-801
Made outside District, interest rate on judgments	28-2709
Married women making, deemed separate	30-209
Money contracts, interest rate	28-2702
Nonnegotiable, assignment	28-2503
Prostitute, contract of for debt contracted in disorderly house	22-2709
Sales, formation under Uniform Sales Act	28-1101—28-1116

Sewers of District, use by Maryland	1-817
Statute of frauds	12-302, 12-304, 12-305
Contract for payment of money	12-302
Delivery of subject matter	12-304
Joint contractor, new promise	12-305
New promise to pay	12-305
Performance in year	12-302
Voidable by	12-302
Void by	12-304
Wife's separate, husband not liable	30-208

**CONTRIBUTING TO DELINQUENCY**

Cases of adults, jurisdiction of juvenile court 11-907

**CONTRIBUTION**

Party walls, use by adjoining owner 1-625 note

**CONTRIBUTORY NEGLIGENCE**

Common Carrier Employers' Liability Act 44-402

**CONVENIENCE STATIONS**

See COMFORT STATIONS

**CONVERSION**

Assets of decedent's estate	22-1406
Conditional vendee guilty of, penalty	22-1406

**CONVERTED RECEIPTS**

Negotiation, effect 28-2011

**CONVEYANCES**

Sec.

See DEEDS; FRAUDULENT CONVEYANCES; REAL PROPERTY; WILLS

Acknowledgment of deeds	45-401—45-412
"Bargain and sell" pass whole estate in absence of contrary showing	45-202
Conveyable estates and methods of conveyance	45-101—45-106
Corporation deeds	45-302
"Covenant," effect when used in deeds	45-303
Covenant of quiet enjoyment	45-306
Decree for conveyance, effect as conveyance	15-110
Deeds	
Effective date	45-501
Priority	45-502
Record as evidence	45-504
When not to be recorded	45-503
Deeds not to be executed or acknowledged by attorney	45-401
Deeds of corporations	45-302
Acknowledgment	45-302
Formal requisites	45-302
"Grant" passes whole estate in absence of contrary showing	45-202
Interpretation of instruments	45-201—45-205
Mortgages, convey qualified fee simple	45-603
Rule against perpetuities	45-102
Rule in Shelley's case abolished	45-203
Trust deeds, convey qualified fee simple	45-603

**CONVICTS**

See INDETERMINATE SENTENCE AND PAROLE; PRISONS AND PRISONERS

Dentists, revocation of license	2-311
Optometrists, revocation or suspension of license	2-516
Police and firemen receiving relief benefits, conviction of crime, reduction or discontinuance of allowance	4-513

**COOPERATIVE ASSOCIATIONS**

See CORPORATIONS IN GENERAL; CORPORATIONS FOR PROFIT; QUO WARRANTO

Annual report	29-834
Contents	29-834
False statements in, penalty	29-834
Filing at principal office	29-834
Filing with recorder of deeds	29-834
Mandamus to obtain filing	29-835
Notice of delinquent report by recorder of deeds	29-835
Articles of incorporation, amendment	29-807
Articles of incorporation, contents	29-805
Authorized capital, number, type, par value, and preferences of shares	29-805
Directors for first year, names and addresses	29-805
Incorporators, names and addresses	29-805
Location of principal office	29-805
Maximum amount one may hold	29-805
Method of distribution of surplus on dissolution	29-805
Minimum shares required for membership	29-805
Name, to include word "cooperative"	29-805
Shares if any, number subscribed	29-805



COOPERATIVE ASSOCIATIONS—Continued		Sec.	COOPERATIVE ASSOCIATIONS—Continued		Sec.
Articles of incorporation, contents—Continued			Recall of shares, effect		29-827
Statement of purposes		29-805	Recording articles of incorporation, fee		29-806
Term of existence, may be perpetual		29-805	Referendum		29-821
Attachment of shares		29-828	Reorganization of prior cooperatives		29-840
Audit of books, annual		29-833	Reservation of right to amend or repeal chapter		29-846
Books of account		29-833	Return on capital, limitations		29-822
By-laws	29-808,	29-809	Separability when parts unconstitutional		29-845
Adoption, amendment and repeal		29-808	Share, certificates		29-825
Contents		29-809	Short title		29-847
Certificate of incorporation		29-806	Subscribers		29-824
Corporate existence begins on issuance		29-806	Transfer of shares		29-826
Issuance by recorder of deeds		29-806	Use of name "cooperative"		29-837
Constructive notice of filing and recording		29-806	Authorized uses		29-837
Corporation laws, when inapplicable		29-843	Unauthorized use, penalty		29-837
Definitions		29-801	Use prior to act, limitation		29-837
Association		29-801	Voting by delegates		29-817
Cooperative basis		29-801	Voting by mail		29-815, 29-816
Member		29-801	Who may incorporate		29-802
Net savings		29-801	Withdrawal from membership		29-826
Savings returns		29-801			
Directors		29-818	COPPER		
Election		29-819	Poisonous compounds, sale, restrictions		2-612
Removal		29-820			
Dissolution		29-836	COPYRIGHTS		
Involuntary	29-719—29-724, 29-726—	29-729	Jurisdiction of United States District Court		11-307
Voluntary		29-836			
Distribution of surplus assets		29-836	CORCORAN GALLERY OF ART		
Election of liquidating trustees		29-836	Property exempted from taxation		47-801, 47-809, 47-810
Method and procedure		29-836			
Two-thirds vote of members required		29-836	CORD		
Expulsion of members, repurchase of shares		29-830	Cord of wood, dimension		10-118
False reports concerning management or finances		29-839			
Federal law applicable to District, reference		28-2803 note	CORDIALS		
Filing articles of incorporation, fee		29-806	See ALCOHOLIC BEVERAGES		
Foreign cooperatives, admission to District		29-841	Definition of "spirits" includes		25-103
Foreign corporations, license fee		29-844			
General provisions	29-101—29-105		CO-RESPONDENTS		
Legal operation not deemed illegal monopoly		29-842	See DIVORCE		
Legal operation not deemed price fixing		29-842			
Legal operation not deemed restraint of trade		29-842	CORN		
Liability of members		29-829	Corn on cob, standard weight of barrel		10-121
License fee		29-844	Shelled corn, standard weight of barrel		10-121
Maximum return of 8 per centum		29-801			
Meetings of members	29-810—29-812		CORONER		
By units of membership		29-812	Appointment by Commissioners		11-1201
Notice		29-811	Bond		11-1202
Regular and special		29-810	Dating writs of execution		15-207
Membership certificates		29-825	Deputies		11-1207
Membership, eligibility and admission		29-823	Absence of coroner serving		11-1207
Member to have one vote, exception		29-801	Appointment		11-1207
Net savings, allocation and distribution		29-831	Bond		11-1207
Officers		29-819	Compensation		11-1207
Bonds		29-832	Disability of coroner		11-1207
Election and apportionment		29-818	Number		11-1207
Removal		29-820	Duties		11-1203, 11-1204
Officers and employees to be bonded		29-832	Inquests, when dispensed with		11-1204
One member, one vote		29-813	Inquests, when held		11-1203
Powers generally		29-804	Jury		11-1206
Promotion expenses, limitations and penalty		29-838	Levy on property held by coroner		16-313
Proxy voting prohibited		29-814	Process, serving in lieu of marshal		11-1208
Purposes for which incorporated		29-803	Failure to serve, penalty		11-1208
Quo warranto proceedings	16-601—16-611		Fees		11-1208
			Testimony reduced to writing		11-1205
			Witnesses		
			Recognizances		11-1205
			Summons to		11-1205



**CORPORATION COUNSEL**See **CRIMINAL PROCEDURE**As general counsel of public utilities commis-  
sion

43-204

Additional compensation

43-204

Duties

43-204

Assistants 1-302, 1-303

Duties

1-302

Oaths, power to administer

1-303

Under direction and control of corporation  
counsel

1-302

Attorney for Commissioners 1-301

Attorney for District to be known as 23-101

Birth returns, failure to file, signing of infor-  
mation

6-304

Boiler Inspection Act violations, prosecution 1-714

Buildings, proceedings to enjoin construction  
or alteration

5-422

Certified public accountant, revocation of cer-  
tificate, duties

2-907

Cosmetologists licensing and registration law,  
violation, prosecution

2-1327

Dentistry law, duties

2-305

Duties

1-301

Healing Arts Practice Act, duties

2-137

Insanitary buildings, condemnation proceed-  
ings

5-608, 5-609

Owner or part owner under legal disability,  
duties

5-609

Title to property in litigation, duties

5-608

Juvenile Court, duties in

11-932

Legal adviser and attorney for District

1-301

Mattress law violations, filing of information

6-605

Oaths, power to administer

1-303

Pharmacy law, duty to enforce

2-617

Podiatry law, duties

2-704

Police and firemen's retiring and relief board  
member

4-510

Record of opinions kept

1-301

Request for opinions transmitted through  
Commissioners

1-301

Steam boiler, unauthorized use, abatement

1-713

Under direction of Commissioners

1-301

Veterinarians' licensing law, prosecution of  
violations

2-812

Weeds, failure to cut after notice, filing of  
information

6-903

Weights and measures regulatory law, prose-  
cution of violation

10-134

Zoning regulations, injunction proceedings

5-422

**CORPORATIONS FOR PROFIT**See **CORPORATIONS IN GENERAL**

Amendment of charter

29-238

Annual report

29-213

Content

29-213

Failure to publish, mandamus

29-214

Mandamus on failure to publish

29-214

Publication

29-213

Verification

29-213

Authority to do business, prerequisites

29-209

By-laws

29-208

Capital stock

29-209

Calls on subscribers

29-209

Failure to pay, forfeiture

29-209

Notice

29-209

**CORPORATIONS FOR PROFIT—Continued**

Sec.

Capital stock—Continued

Certificate of amount paid in, recording 29-212

Common stock, classes authorized 29-238

Decrease 29-229

Increase 29-229

Loans on, prohibited, penalty 29-217

Personalty 29-210

Pledge, effect of stock book record 29-225

Preferred stock authorized 29-238

Prerequisites to diminution 29-230

Restrictions to appear on face 29-239

Sale, effect of stock book record 29-225

Transfer 29-210

Certificate of incorporation 29-201

Acknowledgment required 29-201

Contents 29-202

Capital stock, amount and number of  
shares

29-202

Location

29-202

Name

29-202

Object

29-202

Term of existence

29-202

Trustees for first year

29-202

Effect of recording

29-203

Recording required

29-201

Certificate of organization, recording, pre-  
requisite

29-104

"Charter" defined

29-239

Creditor's right to inspect stock book

29-224

Dissolution 29-701—29-729

Failure to elect trustees does not effect

29-206

Dividends

29-218

Exemption of trustees objecting to im-  
pairing dividends

29-219

Not to be declared if they render corpora-  
tion insolvent or decrease capital stock

29-218

Election of trustees

29-104—29-206

Executors, administrators exempt from per-  
sonal liability when holding stock

29-220

Executors, administrators, may vote stock

29-221

Extension to other businesses

29-229

False reports, penalty

29-215

Fiduciaries exempt from personal liability  
when holding stock

29-220

Fire insurance companies may become per-  
petual

29-237

Formation

29-201

Banks excepted

29-201

Business included in other incorporation  
acts excepted

29-201

Illegal purpose excepted

29-201

Number of incorporators necessary

29-201

Railroads excepted

29-201

Real property dealers excepted

29-201

General provisions

29-101—29-105

Guardians exempt from personal liability  
when holding stock

29-220

Guardians may vote stock

29-221

Income tax returns

47-1516

Liability of stockholders

29-211

Mortgage of realty only on vote of stock-  
holders

29-203



CORPORATIONS FOR PROFIT—Continued		Sec.	CORPORATIONS IN GENERAL		Sec.
Officers		29-207	See	BOARDS OF TRADE; CHARITABLE, EDUCATIONAL AND RELIGIOUS ASSOCIATIONS; COOPERATIVE ASSOCIATIONS; CORPORATIONS FOR PROFIT; CORPORATIONS NOT FOR PROFIT; INSTITUTIONS OF LEARNING; INSURANCE AND INSURANCE COMPANIES; RELIGIOUS SOCIETIES AND INSTITUTIONS	
Bonds may be required		29-207	Acknowledging deeds, method		45-302
Minor, selection		29-207	Architecture, right to practice		
President, to be a trustee		29-207	Certificate of registration		2-1016
Pledged stock		29-222	Revocation of certificate, grounds		2-1027
Pledgee not personally liable		29-222	Boards of trade	29-301—	29-308
Pledger may vote		29-222	Certified Public Accountant, assuming title prohibited		2-901
Powers		29-203	Change of name		29-103
Sale of entire assets			Corporate franchise, usurpation, ouster		16-1609
Rights of dissenting stockholders		29-240	Corporate office, usurpation, ouster		16-1610
Vote of stockholders		29-240	Corporations exempted from income tax		47-1502
Sale of entire property		29-240	Corporations for profit	29-201—	29-240
Effect of disposal		29-240	Deeds, formal requisites		45-302
Resolution of trustees		29-240	Dentistry, use of corporate name in practicing prohibited, penalty		2-316
Rights of dissenting stockholder			Dentists practicing under corporate name, unprofessional conduct		2-311
Demand for payment		29-240	Dissolution	29-701—	29-729
Petition for accounting in District Court		29-240	Actions not to abate		29-716
Stock book		29-223	Assignees, trustees, receivers may be served with process after dissolution		29-718
Effect of record		29-225	Involuntary	29-719—	29-729
Failure to make entries, penalty		29-227	Judgments continue in force in corporate name		29-716
Failure to permit inspection, penalty		29-227	Proceedings after dissolution for use of others authorized		29-717
Keeping		29-223	Quo warranto	29-719—	29-724
Liability to United States for failure to keep open		29-228	Service of process on dissolved corporation		29-718
Open for inspection of stockholders, creditors		29-224	Voluntary	29-701—	29-715
Presumptive evidence of entries		29-226	Duty of recorder of deeds in recording certificates of incorporation		45-708
Stockholder's liability		29-211	Fire escapes and safety provisions, notice requiring construction, service	5-310, 5-	315
Stockholders meetings		29-231	Fiscal officer, instrument made payable to		28-313
Certificate of chairman		29-231	Indorsement by corporation		28-313
Chairman's certificate, copy as evidence		29-236	Foreign, service of process		13-103
Filing chairman's certificate		29-235	General provisions	29-101—	29-105
To extend corporate business, notice		29-231	Charter alteration, publication of notice		29-102
To increase or decrease capital stock, notice		29-231	Charter extension, publication of notice		29-102
Two-thirds rule		29-232	Name change		29-103
Stockholder's right to inspect stock book		29-224	Effect		29-103
Stock in other corporations, purchase prohibited		29-216	Notice		29-103
Subscribers		29-209	Procedure		29-103
Calls		29-209	Recording		29-103
Forfeiture on failure to pay		29-209	Publication of financial statements of foreign corporations		29-105
Notice		29-209	Recording certificate, prerequisites		29-104
Subscriptions			Reorganization of corporations existing before Jan. 1, 1902		29-101
Complete before recording of certificate of organization		29-104	Special charter, publication of application		29-102
Payment of 10% before recording certificate of organization		29-104	Income tax		
Trustees	29-204—	29-206	Corporations exempted		47-1502
Election		29-205	Gross income deductions		47-1505
Failure to elect does not effect dissolution		29-206	Required to report total income to obtain deductions		47-1505
Notice		29-205			
Procedure		29-205			
Elective after first year		29-204			
Empowered to manage corporation		29-204			
Member		29-204			
Qualifications		29-204			
Trustees of estates exempt from personal liability when holding stock		29-220			
Trustees of estates may vote stock		29-221			



**CORPORATIONS IN GENERAL—Continued**      **Sec.****Income tax—Continued**

Returns	47-1516
By receivers, trustees in bankruptcy	
or assignees	47-1516
Contents	47-1516
Filing fee	47-1516
Officers authorized to swear to re-	
turns	47-1516
Income tax rates	47-1502
Inheritance tax rates on transfers to	47-1601
Injunctions to restrain ultra vires acts	29-725
Bill of injunction	29-725
District Attorney to file bill	29-725
Insanitary buildings, proceedings for condem-	
nation, notice, service	5-610
Intercompany dividends deductible in income	
tax returns	45-1505
Involuntary dissolution	29-719—29-729
Account	29-729
Action by District Attorney	29-725, 29-726
Appointment of receiver	29-727
Creditor's bill to dissolve, grounds	29-726
Distribution	29-729
Final decree	29-729
Injunction against transferring assets	29-727
Insolvency for one year as grounds	29-726
Neglect to discharge debts for one year	
as grounds	29-726
Parties defendant to creditor's suit	29-728
Quo warranto	29-719—29-724
Answer to be verified	29-720
Appointment of receiver	29-722
Decree of forfeiture	29-722
Default, proceedings ex parte	29-723
District Attorney to bring	29-719
Final decree	29-724
For misuse, abuse or non-user of cor-	
porate powers and franchise	29-719
For ultra vires acts	29-719
For violations of law	29-719
Petition	29-719
Pleadings	29-721
Receiver to wind up affairs	29-722
Remedy of grievance	29-724
Rule to show cause	29-719
Trial, by jury if requested	29-722
Receiver's duties	29-727
Refusal to discharge debts for one year	
as grounds	29-726
Restraining ultra vires acts	29-725
Negotiable instrument, indorsement, effect	28-123
Plumber's licenses	2-1405
Podiatry, practicing prohibited	2-707
Quo warranto proceedings to dissolve	29-719—29-724
Service by publication	13-104
Ultra vires acts	29-719, 29-725
Unsafe structures and excavations, notice to	
abate condition	5-505
Voluntary dissolution	29-701—29-715
Application	29-701, 29-702
Contents	29-702
Petition to District Court	29-701
Who may apply	29-701

**CORPORATIONS IN GENERAL—Continued**      **Sec.****Voluntary dissolution—Continued**

Before capital stock is paid in	29-714
Before funds are invested	29-714
By expiration of charter, last trustees	
or directors to settle affairs unless	
others are appointed	29-715
Decree of dissolution	29-705
Order to appear, publication of notice	29-703
Receiver	29-706
Acting under court's direction	29-713
Appointment	29-706
Arbitration of disputes	29-710
Bond	29-706
Creditors to file claims with	29-708
Dividends to stockholders	29-712
Settling executory contracts	29-710
Surplus assets, distribution to cred-	
itors	29-711
To be vested with all corporate prop-	
erty	29-707
To collect assets	29-708
To give notice of appointment	29-708
Reference to auditor	29-704
Transactions after petition void as against	
receiver	29-709

**CORPORATIONS NOT FOR PROFIT**

See **BOARDS OF TRADE; CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS; CORPORATIONS IN GENERAL; INSTITUTIONS OF LEARNING; RELIGIOUS SOCIETIES AND INSTITUTIONS**

Dissolution	29-701—29-729
Income tax, certain corporations exempted	47-1502

**CORRECTIONAL INSTITUTIONS**

Buildings and grounds exempted from taxation	47-801
--	--------

**CORRUPTLY INFLUENCING OFFICIALS**

Penalty	22-704
---------	--------

**COSMETOLOGISTS**

Appeal from action of Board, taken to Com-	
missioners of District	2-1305
Application for registration	2-1307, 2-1313
Practicing cosmetologists	2-1313
Proof of qualification	2-1307
Students or apprentices	2-1313
Verification	2-1307
Apprentices	2-1301, 2-1314
Application for examination	2-1314
Definition	2-1301
Limitation on number in beauty shop	2-1314
Barbers, exemption from act	2-1324
Beauty shop	2-1312
Annual license fee	47-2310
Manager	2-1312
Practice in required	2-1312
Board of Cosmetology	2-1302—2-1305, 2-1319, 2-1320, 2-1322
Appointment	2-1302
Bond of Treasurer	2-1302
Books and records prima facie evidence	2-1302
Employment of aid, qualifications, com-	
pensation	2-1320



COSMETOLOGISTS—Continued		Sec.	COSMETOLOGISTS—Continued		Sec.
Board of Cosmetology—Continued			Fees for certificates of licenses—Continued		
Expenses not to exceed receipts		2-1319	Expenses incurred in administering act, payment		2-1319
Inspection of books and records		2-1302	Initial registration fee		2-1319
Investigations, inquiries, or hearings by single member		2-1322	Manicurist		2-1319
Meeting		2-1302	Operator		2-1319
Minimum age of members		2-1302	Owners, managers, and instructors		2-1319
Oath of office		2-1302	Sales demonstrator or lecturer		2-1319
Per diem of members		2-1319	Schools of cosmetology		2-1319
Powers and duties in general		2-1304	Temporary certificate for student or apprentice		2-1319
President		2-1302	Temporary licenses		2-1323
Qualifications of members		2-1302	Healing arts practitioners, exemption from act		2-1324
Quorum		2-1302	Health certificate	2-1307, 2-1313	
Record of proceedings		2-1302	"Instructor" defined		2-1301
Removal of members, hearing		2-1302	Investigations and hearings, single board member		2-1322
Rules and regulations, power to adopt		2-1303	Issuance of certificate or licenses		2-1317
Seal		2-1302	Limited certificate, right to grant		2-1309
Secretary		2-1302	"Managing cosmetologist" defined		2-1301
Surplus funds paid into United States Treasury		2-1319	Manicurist	2-1301, 2-1309	
Term of office		2-1302	Definitions		2-1301
Treasurer		2-1302	Limited certificate		2-1309
Vacancy filled for unexpired term		2-1302	Minimum age		2-1308
Certificates of registration	2-1316, 2-1317, 2-1325		"Operator cosmetologist" defined		2-1301
Applicant from other States, reciprocity	2-1316		Penalties for violating law		2-1326
Display	2-1317		Prosecution by corporation counsel		2-1327
Expiration date	2-1325		Place in which business conducted restricted	2-1321	
Issuance, condition	2-1317		"Place in which cosmetology practiced" defined		2-1301
Renewal	2-1325		Practicing in place other than beauty shop prohibited, exception		2-1312
Restoration of expired certificate	2-1325		Practicing without license prohibited		2-1306
Constitutionality of regulatory law, provisions separable		2-1328	Practitioners suffering from contagious or infectious diseases continuing practice, penalty		2-1326
"Cosmetology" defined		2-1301	Refusal of license, powers of board		2-1304
Definition of terms used		2-1301	Registered apprentices, temporary permit to practice as operator		2-1314
"Demonstrator" defined		2-1301	Register of applicants for certificates or licenses		2-1302
Demonstrator of cosmetological products and equipment		2-1315	Residential purposes, use of beauty shop or school of cosmetology prohibited		2-1321
Charging for materials or services prohibited		2-1315	Revocation or suspension of licenses or certificates		2-1304
Permit		2-1315	Hearing and proof required		2-1304
Registration required		2-1315	Notice given holder		2-1304
Termination of employment, cancellation of permit		2-1315	Power to compel production of books and papers		2-1304
Display of certificate or license		2-1317	Reissuance after expiration of 90 days		2-1304
Educational requirement	2-1308, 2-1310		Sanitation		2-1321
Eligibility requirements for examination	2-1308		Existing rules and regulations unpealed		2-1321
Determination of sufficiency	2-1308		Health department, regulations, enforcement		2-1321
Operator	2-1308		Schools of cosmetology		2-1310
Practicing cosmetologists	2-1308		Course of study, requirements concerning		2-1310
Teachers	2-1308		Instructor, requirements concerning		2-1310
Emergency treatment in home		2-1312	Record of attendance, keeping required		2-1310
Examination for license	2-1309, 2-1313, 2-1318		Student practice upon public, restriction		2-1311
Credit for attending school of cosmetology		2-1313	Secretary of board, salary		2-1302
Exception from requirement		2-1313			
Held quarterly in each year		2-1318			
Limited certificate		2-1309			
Quarter for examination		2-1318			
Rules under which conducted		2-1318			
Subject-matter of examination		2-1318			
Exemption from provisions of act		2-1324			
Fees for certificates or licenses	2-1319, 2-1323				
Annual renewal fee		2-1319			



**COSMETOLOGISTS—Continued**

Sec.

Sleeping room, use as beauty parlor or school of cosmetology prohibited	2-1321
"Students" defined	2-1301
Students practicing upon public for pay prohibited	2-1311
Teaching cosmetology without registration prohibited	2-1306
Temporary licenses pending examination	2-1323
Temporary permit	2-1313

**COSTS**

See EMINENT DOMAIN; FEES AND COSTS

**Alleys or minor streets**

Condemnation proceedings, failure of proceedings, payment of costs	7-331
Opening, widening, or straightening, new jury called	7-317

**COUNTERCLAIM**

Small Claims and Conciliation Branch, Municipal Court	11-809
---	--------

**COUNTERFEITING**

Alcoholic beverage stamps, penalty	25-124
Seal of Commission on Licensure to Practice Healing Art	2-126

**COURT OF APPEALS****Appeals from**

Juvenile Court	11-934
Municipal Court	11-723
Police Court	17-103
Public Utilities Commission orders	43-705
United States District Court	17-101, 17-102
Appeals in unemployment compensation cases	46-312
Apportionment of expenditures; liability of District	11-210
Architects, certificate of registration revoked, appealed	2-1028
Associate justices	11-201
Appointment by President	11-201
Number	11-201
Bills of exception	11-205
Form, power to prescribe	11-205
Board of Pharmacy, hearings, review, procedure	2-606
Chief Justice, appointment by President	11-201
Clerk	11-204
Accounting for fees	11-204
Allowance for expenses of office	11-204
Bond	11-204
Custodian of Court of Appeals Building	11-211
Crier, duties	11-204
Dentist's license to practice, appeal from revocation or suspension	2-312
Deputy clerk	11-204
Fees, regulation by court	11-204
Powers and duties	11-204
Signing of documents, form	11-204
Disqualification of judges	11-205
Counsel in case	11-205
District judge, review of own judgment or order while sitting on Court of Appeals prohibited	11-205
Sitting as judge in trial of case	11-205

**COURT OF APPEALS—Continued**

Sec.

Healing arts	
Refusal of license to practice, appeal	2-129
Unlawful practice, injunction, appeal	2-132
Judges	
Authority to take acknowledgment of deed	45-402
Salary	11-202
Tenure of office	11-201
Jurisdiction	
Decisions of Board of Tax Appeals	47-2404
Exclusive jurisdiction to review	47-2404
Rules for review	47-2404
Library of Congress, withdrawal of books from Library	11-102
License to practice healing arts, appeal from revocation or suspension	2-123
Messenger, duties	11-204
Motion, hearing by two judges authorized	11-205
Nurses	
Denial of registration or reregistration, appeal	2-406
License, appeal from revocation or suspension	2-407
Oath of justices	11-203
Opinions	11-206, 11-207
Cost of copies of report	11-207
Distribution of copies of volume by reporter	11-206
Filed as part of record	11-206
Required to be in writing	11-206
Original papers, power to require inclusion in record	11-205
Podiatrists, revocation or suspension of licenses, review	2-708
Power to regulate matters concerning appeals	11-205
Record on appeals, power to prescribe what shall constitute	11-205
Reporter	11-206
Appointment and removal	11-206
Editing and publishing of opinion	11-206
Review of Board of Tax Appeals decisions	47-2404
Salaries of judges, funds from which payable	11-210
Superior Court of District	11-101
Temporary judges	11-205
Judge qualified	11-205
Selection by judges present	11-205
Term, number each year	11-205
Two justices hearing cause, consent of parties	11-205
Judges divided in opinion, cause affirmed	11-205
Veterinarians, revocation or suspension of license, review	2-810
Writs of error, from Small Claims and Conciliation Branch, Municipal Court	11-817
Writs, power to issue	11-208
<b>COURTS</b>	
See COURT OF APPEALS; JUVENILE COURT; MUNICIPAL COURT; POLICE COURT; UNITED STATES DISTRICT COURT	
Apportionment of expenses between District and United States	11-210, 11-331
False personation before	22-1303
Inferior courts enumerated	11-101
Juvenile	11-901, 11-942



COURTS—Continued		Sec.	CREDITORS—Continued		Sec.
Municipal		11-701, 11-749	Rights under life insurance policies of debtor		35-716
Order for survey, execution by surveyor		1-617	Right to notice of assignments for benefit of creditors		28-2609
Police		11-601, 11-627			
Small Claims and Conciliation Branch of Municipal Court		11-801—11-820			
Superior courts enumerated		11-101			
United States District Court		11-301—11-330			
Circuit Court term		11-316			
Criminal Court term		11-306, 11-311, 11-312, 11-314, 11-322, 11-323, 23-603, 23-610			
District Court term		11-311, 11-312, 11-314			
Equity Court term		11-306, 11-311, 11-312, 11-325—11-328			
General Court term		11-310, 11-312			
Probate Court term		11-501—11-520			
COURTS OF RECORD			CREDITS		
Inquiry in commitment of convicted persons to District Training School		32-621	Levy on credits in attachment and garnishment		16-312
Judges of, may celebrate marriages		30-106			
COVENANTS			CREDIT UNIONS		
Against having encumbered		45-307	See BANKS AND OTHER FINANCIAL INSTITUTIONS		
Effect when term is used in deeds		45-303	Approval, investigation by Comptroller of Currency		26-504
For further assurances		45-308	By-laws		26-508
General warranty		45-304	Certificates of incorporation, contents		26-503
Quiet enjoyment		45-306	Credit committee		26-511
Running with land, married woman's power to execute		30-202	Directors		26-511
Special warranty		45-305	District licenses, revocation		26-506
CRACKERS			Dividends		26-513
Exception from weight regulations concerning bread		10-113	Incorporation		26-502
CRANBERRIES			Management		26-511
Standard barrel, dimensions		10-115	Membership		26-509
CRATES			Expulsion and withdrawal		26-514
Onion crate, standard dimensions		10-115	Meetings		26-509
Use of other than standard containers prohibited		10-116	Voting		26-510
CREAM			Officers		26-511
See MILK AND MILK PRODUCTS			Powers		26-507
Bottles or other containers, regulations and requirements concerning		10-114	Recording certificate		26-505
Production and sale, regulatory law		33-301—33-322	Reserves		26-512
CREAMERIES			Restrictions on use of "credit union"		26-517
See MILK AND MILK PRODUCTS			Rights to amend, repeal reserved		26-518
Regulation		33-301—33-322	Shares issued in trust		26-515
CREAM OF TARTAR			Shares issued to minors		26-515
Sale by other than pharmacist		2-601	Short title of chapter		26-501
CREDITORS			Supervision by Comptroller of Currency		26-506
See DECEDENTS' ESTATES; FRAUDULENT CONVEYANCES			Supervisory committee		26-511
Assignments for benefit of creditors		28-2601—28-2610	Taxation		26-516
Bulk sales		28-1701			
Claims against decedents' estates		18-501—18-530			
Corporations					
Bill to dissolve, grounds		29-726			
Rights in voluntary dissolution		29-711			
Fraudulent conveyances		12-401—12-403			
Of corporations, right to inspect stock book		29-224			
			CREMATORIES		
			See CEMETERIES AND CREMATORIES		
			CREOSOTE		
			Sale, restrictions		2-612
			CRIER		
			See UNITED STATES DISTRICT COURT		
			Court of Appeals		11-204
			CRIMINAL COURT TERM		
			See UNITED STATES DISTRICT COURT		
			Attachés prohibited from receiving pay from professional bondsmen		23-603
			Bail after regular hours, person authorized to take		23-610
			Bills of exceptions		11-322
			Bonds and undertakings		28-2403
			Clerk to attend session		11-323
			Concurrent jurisdiction with Police Court		11-322
			Crier for, appointment		11-312
			District attorney to attend session		11-323
			Exceptions to ruling of presiding justice		11-322
			Jurisdiction		11-322
			Marshal to attend court		11-323
			Special term of United States District Court		11-311
			Transfer of cases, certification		11-314
			CRIMINAL LAW AND PROCEDURE		
			See CRIMINAL OFFENSES; CRIMINAL PROCEDURE		



## CRIMINAL OFFENSES

Sec.

See ALCOHOLIC BEVERAGES; BANKS AND OTHER

FINANCIAL INSTITUTIONS; INSANE CRIMINALS

Abortion	22-201
Accessories after the fact	22-106
Accessories before the fact	22-105
Accountants, practicing as certified public accountant without certificate	2-909
Adulteration of food or drugs	33-109
Adultery	22-301
Advertisement, false	22-1411—22-1413
Use of flag for	22-3414
Affray, penalty	22-1101
Agents of Public Utilities Commission divulging information	43-601
Alcoholic beverages	
Intoxicated persons, sales to	25-131
Minors misrepresenting age to obtain	25-130
Minors, sales to	25-121
Sales to notoriously intemperate persons	25-121
Unlawful transportation, penalty	25-137
Alley dwelling law, general penal clause	5-102
Alley-dwelling slum-clearance projects	5-106
Occupying or converting building into dwelling after July 1, 1944, penalty	5-106
Anatomical Board law	2-206, 2-203
Animals, driving, riding, or leading on footways, penalty	22-1118
Architects, unregistered, misuse of title	2-1030
Arson	22-401—22-404
Assault	22-501—22-505
Attempts to commit crime, penalty	22-103
Balloons, flying, penalty	22-1117
Barbed-wire fences, penalty	7-1104
Barber's registration law, unlawful acts enumerated, penalty	2-1114
Bawdy-houses, keeping, penalty	22-2722
Bigamy	22-601
Birth-returns law, violations	6-304
Blackmail, penalty	22-2305
"Blasphemy" defined, penalty	22-1107
Bodily harm, threatening	22-507
Boiler Inspection Act, violation	1-714, 1-718
Bonfires, kindling, penalty	22-1113
Bookmaking	22-1508
Books, stealing or injuring	22-3106
Boundary trees, stones, destroying	22-3109
Boxing exhibitions, violations of law, penalty	2-1207
Bribery	22-701, 22-702
Bucket shops, bucketing	22-1509—22-1512
Building or street materials, injuring	22-3113
Building regulations, building or altered in violation of law	5-403
Bull fights, penalty	22-810
"Burglary" defined, penalty	22-1801
Capitol Grounds, punishment	9-112
Cemeteries and crematories	
Penalties	27-126
Prosecutions	27-126
Cemetery property, destroying	22-3114
Check, draft, or order, making, drawing, uttering with insufficient funds	22-1410

## CRIMINAL OFFENSES—Continued

Sec.

Child labor	
Regulations, penalty for violating	36-215
Selling merchandise to minors for public resale	36-223
Street trades	36-222
Children	
Cruelty to	22-901
Failure to provide for, penalty	22-902
Under 17, commitment	3-120, 3-121
Under 18	11-907
Cock fighting	22-810
Coin machines, operating with slug	22-1407
Common-law offenses, penalty	22-107
Compounding felony, police and private detectives	4-175
Concealing assets in compromise or closing agreement under income tax law	47-1536
Conditional sale, removing property subject to	22-1406
Confidence games	22-1506
Connivance in evasion of assessments by assistant assessors	47-707
Conspiracy	
District Training School, procuring improper commitment	32-619
Firemen conspiring to interfere with efficiency of department	4-407
Jurisdiction	11-602, 11-909
Juvenile Court	11-909
Police Court	11-602
Police Department, interference with operation of	4-125
Conspiracy to have person adjudged feeble-minded unlawfully	32-619
Conversion by conditional vendee	22-1406
Conviction of, when disqualified from holding office	1-316
Cosmetologists Licensing and Registration Law, violation, penalty	2-1326
Counterfeiting, alcoholic beverage stamps	25-124
Criminal Court, jurisdiction	11-322
Criminal insane	24-301—24-303
Criminals, procuring enlistment of	22-3413
Cruelty to animals	2-801—2-814
Cruelty to children, penalty	22-901
Damaging or defacing water pipes	43-1536
Dead bodies	
Deceased indigents, delivery to medical schools and boards, violation	2-208
Disturbing	2-206
Removing without permit	2-206
Selling, penalty	22-3103
Decedents' estates	22-1404, 22-1405
Concealing writings	22-1405
Converting assets	22-1404
Misusing property	22-1404
Secreting writings	22-1405
Deeds, maliciously recording, intent to extort	22-1302
Defaming life insurance companies	35-411
Definitions	
Abortion	22-201
Adultery	22-301
Anything of value	22-102
Arson	22-401



## CRIMINAL OFFENSES—Continued

## Definitions—Continued

Bigamy	22-601
Blasphemy	22-1107
Bribery	22-701
Bucket shop	22-1509
Burglary	22-1801
Cruelty to animals	22-801
Fornication	22-1001
Gaming table	22-1507
Gift enterprise	22-3401
Housebreaking	22-1801
Incest	22-1901
Kidnaping	22-2101
Paper	22-101
Rape	22-2801
Robbery	22-2901
Vagrancy	22-3301
Weapons	22-3201
Writing	22-101
Defrauding innkeepers, penalty	22-1301
Deleterious matter, depositing in Rock Creek, Potomac River, penalty	22-1703
Dentistry	
False name, use in practicing	2-320
False representation as to qualifications, penalty	2-320
Forgery or fraudulent use of diploma, certificate for license	2-319
License or registration card, failure to dis- play	2-318
Postgraduate classes or schools	2-321
Practicing under improper name	2-316
Practicing without license	2-328
Second or subsequent offenses, penalty	2-329
Desertion of	
Family	22-903—22-906
Minor child	22-903
Wife	22-903
Destroying apparatus of Public Utilities Com- mission	43-909
Disfiguring maliciously	22-506
Disorderly conduct	22-1101, 22-1120
Disorderly houses, keeping, penalty	22-2722
District Court of United States for District of Columbia, jurisdiction	11-306
District property, injuring	22-3111
District Training School, conniving to procure improper commitment to	32-619
Diversion of District funds	47-104
Divulging information obtained from Bureau of Internal Revenue	47-2504
Dogs	
Allowing female in heat at large, pen- alty	22-1111
Dangerous, allowing at large, penalty	22-1111
Decoying from master's house	47-2007
Removing collar or tax tag	47-2006
Urging fights in streets	22-1110
Urging to frighten or bite, penalty	22-1110
Drinking in streets, parks, unlicensed public places, penalty	25-128
Driving while drugged	40-609
Driving while drunk	40-609
Dueling	22-1102—22-1104

## CRIMINAL OFFENSES—Continued

## Electrical Wiring Inspection Law

Connecting current before inspection and approval	1-720
Failure or refusal to remove or repair de- fective wiring	1-720
Police Court, jurisdiction	1-720
Electric company property, tampering with	22-3115
Elevators, regulations for construction and operation, violation	1-229
Embezzlement	22-1201—22-1211
Employer deducting unemployment compensa- tion contributions from wages	46-318
Employers failing to provide seats for female employees	36-311
Employer violating Unemployment Compensa- tion Act	46-319
Employment agency law violations	47-2111, 47-2347
Enticing boys from National Training School for Boys	32-818
Excessive fees in unemployment compensa- tion cases	46-318
Excessive promotion expense of cooperative association	29-838
Explosives, placing with intent to destroy or injure property	22-3105
Extortion, recordation of deed, contract, or conveyance with intent of	22-1302
Failure to exhibit papers in distraint proceed- ings for collection of personal taxes	47-1405
Failure to file personal property tax return	47-1410
Failure to give testimony in unemployment compensation hearings	46-311
Failure to keep child in school	31-207
Failure to make corporate stock book en- tries	29-227
Failure to permit inspection of corporate stock book	29-227
False personation	22-1302—22-1308
Obtaining narcotic drugs by	33-420
False pretenses, penalty	22-1301
False reports regarding cooperative associa- tions	29-839
False statements as to motor vehicle liens	40-714
False statements in compromise or closing agreement under income tax law	47-1536
False statements in cooperative association annual report	29-834
Felony	
Assault with attempt to commit	22-503
Compounding, police and private detec- tives	4-175
Fights with animals	22-1105
Fire alarms, false, penalty	22-1119
Fire Department, conspiracy to interfere with efficiency, penalty	4-407
Fire escapes and safety provisions	
Failure to provide	5-313
Commissioners constructing, criminal prosecution not waived	5-313
Interfering with or preventing entry to correct conditions	5-314
Violation	5-308
Fixtures, depredations of	22-3104



CRIMINAL OFFENSES—Continued		Sec.	CRIMINAL OFFENSES—Continued		Sec.
Flag			Insect Pests Control Law		6-904
Mutilating, defiling		22-3414	Insurance		
Use for advertising		22-3414	Failure to make entries in capital-stock book of domestic life insurance companies		35-515
Fleeing from scene of vehicle accident		40-609	False entries in records of fire, casualty, or marine companies		35-1313
Forcible entry and detainer		22-3101	False statements in fire, casualty, or marine company reports		35-1312
Penalty		22-3101	False statements in life company reports		35-408
Foreign consular and diplomatic officers, property, interference with, penalty	22-1115, 22-1116		False statements regarding life insurance applications		35-719
Forgery	22-1401, 22-1402		Fraudulent representations regarding fraternal benefit memberships		35-913
Alcoholic beverage stamps		25-124	Life insurance agent embezzling premiums		35-429
Forging proof of motor vehicle owners' financial ability		40-411	Life insurance broker embezzling premiums		35-429
Obtaining narcotic drugs by		33-420	Penalties for violation of life insurance act		35-801
Fornication		22-1001	Representing unauthorized fire, casualty, and marine companies		35-1343
Fraud			Unlawful advertising by life insurance companies		35-410
In obtaining dependent child home care allowance		32-708	Unlawful issuance of accident and health policies		35-712
Obtaining aid for blind person by		46-113	Violating injunctions against fraternal benefit associations		35-914
Obtaining narcotic drugs by		33-420	Interfering with National Guard on active duty		39-606
Obtaining old-age assistance by		46-210	Intoxicated persons		
Obtaining unemployment compensation by		46-319	Public places, being in		25-128
Gambling	22-1501—22-1512		Sales of alcoholic beverages to		25-121
Bucket shops	22-1509—22-1512		Vehicles, operation of		25-127
Confidence games		22-1506	Jail officers and employees corrupt conduct, penalty		22-2602
Gaming	22-1504—22-1508		Jurisdiction, United States District Court		11-306
Lotteries	22-1501—22-1503		Jury and jurors		22-1414
Pools		22-1508	Collusion in drawing		22-1414
Game and Fish Laws	22-1601—22-1627		Jury box, tampering with		22-1414
Gaming	22-1504—22-1508		Kidnaping		22-2101
Garbage collections	6-504, 6-508		Kites, flying, penalty		22-1117
Incinerators constructed, owners disposing of garbage by other means		6-508	Kosher, mislabeling meat as	22-3404—22-3406	
Offering to or acceptance of gifts by collectors, penalty		6-504	Larceny	22-2201—22-2208	
Gas lines, tapping		23-3116	As to building associations		26-404
Gift enterprise	22-3401—22-3403		Trust, title and indemnity companies		26-320
Grave robbery	2-206, 22-3103		Law relating to District Training School		32-619
Growing crops, cutting down, destroying		22-3108	Libel	22-2301—22-2305	
Harboring boys escaping from National Training School for Boys		32-818	Locomotives or railway cars, endanger passage of		22-3119
Harbor regulations, penalty for violation		22-1701	Lotteries	22-1501—22-1503	
Healing Arts Practice Act			Manslaughter		
False swearing to evade provision		2-128	Manslaughter with vehicle includes negligent homicide		40-607
General penal clause		2-130	Punishment		22-2405
Health and safety regulations		6-119	Manuscripts, stealing or injuring		22-3106
Diseases, regulations for control, violation, penalty		6-119	Marriage		
Homicide			Celebration without authority		30-107
Assault with attempt to commit		22-501	Celebration without license		30-108
Manslaughter		22-2405	Failure to make return of license		30-113
Murder	22-2401—22-2404		Mattress Law violations		6-605
Housebreaking		22-1801	Maximum hours of labor, laborers, mechanics on public works		22-3407, 22-3408
Immunity of witnesses in prosecutions under Life Insurance Act		35-802	Mayhem, penalty		22-506
Incest		22-1901			
Increasing total debt of District		47-102			
Indecent exposure, penalty		22-1112			
Indecent publications		22-2001			
Injuries to property	22-3101—22-3122				
Insanitary building					
Condemned, owner or part owner failing or refusing to demolish		5-607			
Violations		5-613			



CRIMINAL OFFENSES—Continued		Sec.
Meat, mislabeling as Kosher	22-3404—22-3406	
Milestones, removing	22-3120	
Minimum wage law violations	36-417, 36-418	
Minor offenses, jurisdiction of Commissioners of District	1-224	
Penalties prescribed, effective date	1-225	
Misprisions by jailers	22-2602	
Misuse of documents in compromise or closing agreement under income tax law	47-1536	
Mortgaged goods, removing from District, penalty	22-1209	
Motor Vehicle Lien Law	40-714	
Motor vehicle owners' financial responsibility act	40-408—40-411	
Motor vehicles, unauthorized use, penalty	22-2204	
Murder	22-2401—22-2404	
First degree	22-2401, 22-2402, 22-2404	
Second degree	22-2403, 22-2404	
Narcotic drugs		
Administering, unauthorized	33-402	
Compounding, unauthorized	33-402	
Control over, unauthorized	33-402	
Dispensing, unauthorized	33-402	
Divulging contents of records	33-402	
False labelling	33-420	
False personation to obtain	33-420	
False statements to obtain	33-420	
Forged labels, affixing	33-420	
Forgery to obtain	33-420	
Fraud to obtain	33-420	
Manufacture, unauthorized	33-402	
Possession, unauthorized	33-402	
Prescribing, unauthorized	33-402	
Resisting officer serving search warrant	33-402	
Sale, unauthorized	33-402	
Neglect of duty by assistant assessors	47-707	
Negligent homicide by vehicle operator	40-606	
Negligent violation of income tax law	47-1542	
Nonresidents violating motor vehicle operators' permit requirements	40-303	
Nonsupport of wife, minor children	22-903	
Notaries public, excessive fee	1-515	
Nurses' Regulatory Law	2-409	
Obstructing justice	22-703	
Obstructing personal property, examinations of assessor	47-1401	
Offenses committed outside District	22-108	
Offenses not covered by Code, penalty	22-107	
Officials, corruptly influencing	22-704	
Operating medical or dental college without registration and permit	31-903	
Operating motor vehicle after revocation or suspension of permit	40-302	
Operation of motor vehicle while registration is suspended or revoked	40-206	
Optometry Law	2-502	
False impersonation of another	2-502	
Practicing without license	2-502	
Outdoor sign regulation, violation	1-233	
Pandering	22-2705—22-2709	
Parachutes, flying, penalty	22-1117	
Perjury		
As to building associations	26-404	
Board of Assistant Assessors	47-606	

CRIMINAL OFFENSES—Continued		Sec.
Perjury—Continued		
Board of Equalization and Review	47-606	
Fraternal benefit associations, death claims in	35-913	
In personal property tax return affidavits	47-1203	
Marriage license, use in obtaining	30-110	
Penalty	22-2501	
Trust, title, and indemnity companies	26-320	
Permitting minors to loiter around newspaper salesrooms during school hours	36-224	
"Person" defined	22-1409	
Plant Disease Control Law	6-904	
Plants, growing, cutting down, or destroying	22-3108	
Plumber's Licensing Law	2-1401—2-1408	
Plumbing Inspection Law	1-725	
Regulations, violations, penalty	1-725	
Podiatry Licensing Law		
Diploma, certificate, or license, altering	2-714	
Diploma, selling or offering to sell	2-714	
False representations concerning degree	2-715	
General penal clause	2-717	
Impersonating another at examination	2-715	
License and registration card, failure to display	2-713	
License, selling or offering to sell	2-714	
Postgraduate classes or schools, conducting without approval of board	2-716	
Practicing under false name	2-715	
Practicing without license	2-717	
Police Court, jurisdiction	11-602	
Police Department		
Aiding criminals to escape justice	4-175	
Conspiracy to interfere with or obstruct conduct or operation of force	4-125	
Interfering with supervisory powers over certain businesses	4-150	
Neglect to make arrest, penalty	4-143	
Unnecessary force in making arrest	4-176	
Pools, gambling	22-1508	
Potatoes, mislabeling	22-3409—22-3412	
Potomac River, throwing or depositing matter into, penalty	22-1702	
Prison breach, penalty	22-2601	
Private detective, acting as without complying with law	4-174	
Privies, construction and maintenance contrary to law	6-704	
Prize fights	22-1105, 22-1106	
Property of another, taking and carrying away, penalty	22-1211	
Property of District, purloining	22-2206	
Prosecutions	22-109	
Prostitution	22-2701, 22-2723	
Definition, penalty	22-2701, 22-2703	
Female under 16	22-2704	
Houses of	4-145, 4-146, 11-604, 22-2701—22-2722	
Inviting	22-2701	
Pandering	22-2705—22-2712	
Premises occupied for	22-2713—22-2722	
Vagrancy	22-2702	
Wife, causing to practice	22-2708	



CRIMINAL OFFENSES—Continued		Sec.	CRIMINAL OFFENSES—Continued		Sec.
Public highways, obstructing		22-3121	Stolen property		
Fines collected in name of United States		22-3122	Destroying, penalty		22-2208
Penalty		22-3121	Receiving, penalty		22-2205
Public records, destroying or defacing		22-3107	Receiving property of District, penalty		22-2207
Public utilities and their agents	43-901—43-913		Stones, throwing, in streets, penalty		22-1109
Demanding or receiving rates different from schedule		43-902	Street cars, failing to stop at intersection		4-112
Divulging information obtained in investigations		43-601	Street lighting company failing to furnish and set up equipment		7-705
Failure to obey orders of Public Utilities Commission		43-906	Streets and other ways		
Failure to perform lawful duty		43-906	Cutting trenches without permit	7-615, 7-616	
False information, furnishing		43-905	Playing in, penalty		22-1108
False statements to secure approval of issuance of securities		43-901	Removing work or material without permit	7-615, 7-616	
Keeping accounts improperly		43-905	Subornation of perjury, penalty		22-2501
Perjury before Public Utilities Commission		43-712	Tobacco, furnishing to minors		22-1120
Rebates		43-904	Trees, cutting down, destroying		22-3108
Refusal to remove utility poles	43-1404, 43-1411		Trees on public grounds, injuring		22-3110
Refusing information		43-905	Unauthorized tapping of water-mains laid by United States		43-1538
Unlawful issuance of securities		43-808	Unauthorized use of name "cooperative"		29-837
Violating orders of Board of Tax Appeals		43-907	Unauthorized use or sale of registered milk-beverage containers		48-303
Violating orders of joint board		43-907	Uniformed forces, discriminating against		22-3415
Violating orders of Public Utilities Commission		43-907	Uniform Narcotic Drug Law	33-401—33-425	
"Pugilistic encounter" defined		22-1106	United States property, injuring		22-3111
Rape		22-2801	Unlawful assembly, penalty		22-1107
Real estate and business brokers		45-1416	Unlawful entry on private property, penalty		22-3102
Receiving embezzled property, penalty		22-1204	Unsafe buildings and structures		5-504
Reckless driving		40-605	Failure to remove after notice		5-504
Recordable instrument, false certification of, penalty		22-1308	Use or possession of vehicle smoke screen device		40-610
Registered bottles, unauthorized use of, penalty		48-102	Vagrancy	22-2702, 22-3301	
Religious congregations, disturbing, penalty		22-1114	Prostitution		22-2702
Representing unlicensed insurance company		35-201	Vandalism		22-3112
Resisting service of search warrant for narcotic drugs		33-414	Veterinarians' Licensing Law, violation, prosecution		2-811, 2-812
Robbery	2-206, 22-2901, 22-2902		Violating employment laws for women		36-309
School census, neglect or refusal to furnish information		31-210	Violating Labor Union Label Registration Law		48-403
Second conviction, added penalty		22-104	Violating Motor Fuel Tax Law		47-1911
Seduction	22-3001, 22-3002		Violating Public Auction Permit Law		47-2207
Definition, penalty		22-3001	Violating secrecy of income tax returns		47-1521
Teacher, of pupil by		22-3002	Violation of license requirements		47-2347
Selling merchandise to certain minors for public resale		36-223	Violation of Milk, Cream, and Ice Cream Law		33-319
Sewer connections, failure to make after notice		6-403	Violation of Motor Vehicle Registration Law		40-104
Sexual intercourse		22-2701	Violation of personal property tax laws		47-1303
Slugs	22-1407, 22-1408		Violations of Institutions of Learning Act		29-419
Coin machines, operating with		22-1407	Warehouse Receipts Act	28-2101—28-2106	
Issuing		22-1408	Delivery of goods without obtaining negotiable receipts		28-2105
Manufacturing		22-1408	Encumbered goods, negotiation of receipts		28-2105
Possession		22-1408	Failure to mark receipt as duplicate		28-2103
Small-loan law violations		26-607	False statement in receipt		28-2102
Smoke Preventive Law		6-803	Issuing receipts for goods not received		28-2101
Speeding		40-605	No title to goods, negotiation of receipts		28-2106
Statutes and regulations for private hospitals and asylums		32-303	Warehouseman failing to disclose ownership of goods		28-2104
Steam and other operating Engineers Licensing Law		2-1506	Water, maliciously making impure		22-3118
			Water meters, tampering with		22-3117
			Water pipes, tapping		22-3117
			Weapons	22-3201—22-3216	
			Weeds, failure to cut after notice		6-901



**CRIMINAL OFFENSES—Continued**

	Sec.
Weights and Measures Regulatory Law, violation, penalty	10-134
Wife desertion	22-903
Wilful failure to make inheritance or estate tax return	47-1622
Wilful failure to pay inheritance or estate taxes	47-1622
Wilful failure to supply inheritance or estate tax data	47-1622
Wilful violation of Income Tax Law	47-1542
Wills	22-1403
Destroying	22-1403
Mutilating	22-1403
Secreting or withholding	22-1403
Stealing	22-1403
Works of art, stealing or injuring	22-3106
Zoning Law, violations, penalty	5-422

**CRIMINAL PROCEDURE**See **INSANE CRIMINALS; PLEADINGS**

Abandonment of prosecution	23-104
Extension of time for grand-jury action	23-104
Grand jury failing to act	23-104
Appeals by District or United States	23-105
Same right as defendant	23-105
Verdict for defendant not to be set aside	23-105
Bail, deposit and forfeiture	23-106
Death penalty	23-701
Death chamber, apparatus, to be provided by Commissioners of District	23-702
Electrocution prescribed	23-701
Executioner, assistants, appointment by Commissioners of District	23-702
Executions	23-704
Persons not to be present	23-705
Persons permitted to be present	23-704
Place	23-706
Sentence to be in writing	23-703
Defendant, inability to pay witness fees	23-109
Depositions	23-111
Commission to take, issuance and return	23-112
Grounds	23-111
Oral and written	23-111
Required contents	23-111
Electrocution prescribed for death penalty	23-701
Fees for defense witnesses	23-109
Fresh pursuit	23-501
Arrests by officers of States	23-501
Commitment when arrest is lawful	23-502
Construction of act	23-503
Definition	23-504
Discharge when arrest unlawful	23-502
Hearings	23-502
Fugitives from justice	23-401
Admittance to bail	23-404
Apprehension	23-401
Bond for appearance before proper official	23-409
Commitment	23-405
Discharge when not demanded	23-406
Examination in Police Court	23-404
Extradition	23-401
Associate justices of District Court, duties	23-402
Chief Justice of District Court, duties	23-401
Forfeiture of bond	23-405

**CRIMINAL PROCEDURE—Continued**

	Sec.
Fugitives from justice—Continued	
Fugitives from Federal districts	23-410
Fugitives from foreign countries	23-410
Notice of apprehension to be forwarded	23-407
Period of detention	23-408
Voluntary return	23-409
Warrants for apprehension, issuing from Police Court	23-403
Indictments	23-201
Allegations regarding	
Intent to defraud, sufficiency	23-203
Money, sufficiency	23-202
Perjury, sufficiency	23-204
Subornation of perjury, sufficiency	23-205
Joinder of offenses	23-201
Joint defendant, discharge to be witness	23-110
Bars further prosecution	23-110
Method of discharge	23-110
Witness for defense	23-110
Witness for United States	23-110
Peremptory challenges	23-107
Professional bondsmen	23-601
Affidavit of past compliance on renewal of authority	23-608
Attorneys paying to secure clients, unlawful	23-604
Charges, attempting settlement or dismissal prohibited	23-605
Definitions	23-601
Bonding business	23-601
Bondsman	23-601
Employees to file affidavit of compliance	23-608
Enforcement of laws regarding bonding	23-612
Good moral character required	23-608
List of employees to be filed with court, contents	23-608
Lists to be furnished prisoners on request	23-606
Names to be posted in places of detention	23-606
Not to be given information on proposed raids	23-609
Penalties	23-611
Persons convicted of moral-turpitude offenses not qualified	23-608
Prisoners may communicate with	23-606
Prohibited from places of detention except on request in behalf of prisoner	23-607
Qualifications to be established by courts	23-608
Record of calls in detention places to be kept	23-607
Record of requests for bondsman to be kept	23-606
Remuneration beyond regular fee prohibited	23-605
Securing business	
Paying attorneys prohibited	23-603
Paying court attachés prohibited	23-603
Paying public officials prohibited	23-603
Prosecutions, conduct of	23-101
Corporation counsel, attorney for District to be known as	23-101
Jurisdiction as between District Court and Police Court	23-103
Question of conducting to be certified to Court of Appeals	23-102



<b>CRIMINAL PROCEDURE—Continued</b>	<b>Sec.</b>	<b>CURBINGS</b>	<b>Sec.</b>
Prosecutions, conduct of—Continued		Assessment of costs against abutting property	7-623
When by corporation counsel	23-101	Exemption from replacement cost	7-626
When by district attorney	23-101	Paving under permit, assessment of cost	7-627
When in name of District	23-101	Property abutting two or more streets, limitation on aggregate assessment	7-629
When in name of United States	23-101	Street improvement, assessment against abutting property	7-606
Search warrants	23-301	<b>CURTESY</b>	
Affidavit to be included or annexed	23-301	See DECEDENTS' ESTATES	
Contents	23-301	Estates by the curtesy	18-215
Destruction of seized property	23-304	<b>CUSTODIANS OF PROPERTY</b>	
Disposition of property seized	23-302	See PROPERTY CUSTODIAN	
Execution by police	4-138	<b>DAIRIES AND DAIRY PRODUCTS</b>	
Form	23-301	See FOOD AND DRUGS; MILK AND MILK PRODUCTS	
Issuance upon complaint under oath	23-301	Dairies, requirements	33-302, 33-305, 33-312
Property subject	23-301	Inspector, right to act as livestock inspector	6-116
Retention of property if defendant is committed	23-303	<b>DAMAGES</b>	
Return of seized property	23-304	See EMINENT DOMAIN	
Separability provisions	23-305	Ejectment	16-511
Sentence, death, time of execution may be extended	23-114	Excessive damage as basis for new trial	13-221
Postponement pending appeal	23-113	Interest as element	28-2708
Transfer of cases from one court to another	11-314	Liquidated and unliquidated, joinder	13-208
Verdict not to be set aside by ground for challenge	23-108	Measure of damages, replevin	16-1811
Witnesses unable to give security for appearance, detention	4-144	Negligence causing death	16-1201
Witness fees, defense witnesses	23-109	Plural breaches, pleading	13-205
<b>CRIMINALS</b>		Recovery in quo warranto proceedings	16-1611
See PRISONS AND PRISONERS		Replevin, Municipal Court	11-731
<b>CROSSING POLICEMEN</b>		Unfounded equitable actions	13-219
Detailing to street railway and street intersections	4-112—4-114	Wrongful death	16-1201
<b>CROSSWALKS</b>		<b>DANCE HALLS</b>	
Snow and ice		License	47-2320
Duty of street railway to clear away	7-614	<b>DANGEROUS WEAPONS</b>	
Removal	7-802, 7-803	Dealer's license	47-2340
<b>CRUELTY</b>		<b>DATE</b>	
As ground for legal separation	16-403	See COMPUTATION OF TIME	
<b>CRUELTY TO ANIMALS</b>		Deeds, effective date as to, creditors	45-501
Additional definition	22-802	Parties	45-501
Arrest without warrant, notice to owner	22-804	Subsequent bona fide purchasers	45-501
Bull fighting	22-810	Subsequent mortgagees	45-501
Keeping or using place	22-809	Omission from negotiable instrument	28-107
Cockfighting		Undated negotiable instrument, holder's right to fill in date	28-114
Keeping or using place	22-809	<b>DAUGHTERS OF THE AMERICAN REVOLUTION</b>	
Penalty	22-810	Property exempted from taxation	47-821—47-825
Definitions	22-801, 22-813	<b>DAYS OF GRACE</b>	
Docking tails of horses, penalty	22-814	Abolished, Negotiable Instruments Law	28-616
Impounders	22-807	Life Insurance premiums	35-703
Issuance of search warrants	22-805	<b>DEAD ANIMALS</b>	
Maimed or diseased animals, abandoning	22-812	Contracts for collection and disposal	6-502
Neglecting sick or disabled animals	22-811	<b>DEAD HUMAN BODIES</b>	
Penalty	22-801	See ANATOMICAL BOARD; CEMETERIES AND CREMATORIES; GRAVE ROBBERY	
Prosecutions	22-806	Bodies requiring burial at public expense	2-202
Railroad companies, penalty	22-803	Delivery of bodies to Anatomical Board	2-202
Relief of impounded animals	22-808	Notice to deliver to Anatomical Board	2-202
<b>CRUELTY TO CHILDREN</b>		Relatives claiming body and requesting burial, effect	2-202
See CHILDREN		Report to Anatomical Board	2-202
Failure to provide for children, penalty	22-902	Requests for burial or cremation, effect	2-202
Jurisdiction, Police Court	11-603		
Penalty	22-901		



**DEAD HUMAN BODIES—Continued**

Control over	2-201
Conveyance through District	27-119
Cremation by health officer, containers for ashes	6-115
Cremation required in certain cases	27-129
Criminal offenses	
Buying or selling	22-3013
Grave robbery	22-206, 22-3103
Death from pestilential diseases	27-119
Deceased indigents, distribution of bodies among medical and dental schools and boards	2-201—2-208
Apportionment, method	2-203
Bond given by school	2-204
Expense of delivery paid by schools	2-207
Notice given before delivery	2-203
Penalty for violating law	2-208
Receipt given for body	2-203
Relative or friend claiming body, effect	2-203
Use of body within District required	2-205
Disinterment by order of court	27-128
Disturbing or removing from vault, penalty	2-206
Embalming	
Before issuance of death certificate	27-125
Permit required	27-125
Within four hours of death	27-125
Exhibition, permit of health officer	27-120
Grave robbery, penalty	2-206, 22-3103
Interment	
Disinterment, disposal	27-118
Duty of health officer to enforce regulations	6-102
Keeping, notice to health officer	27-120
Mode of burial	27-122
Penalties regarding	27-126
Permit for cremation required	27-125
Prosecutions	27-126
Receipt of indigent dead by Anatomical Board	2-203
Relative or friend claiming body for burial	2-202
Reports of death to health officer	27-120
Restrictions on burial	27-121
Traffic in, prohibited	2-206

**DEADLY WEAPONS**See **WEAPONS**

Dealer's license 47-2340

**DEAF PERSONS**See **COLUMBIA INSTITUTION FOR THE DEAF****DEATH BENEFITS**

Police and Firemen's Relief Fund 4-507

**DEATH FROM NEGLIGENCE**See **NEGLIGENCE CAUSING DEATH****DEATH PENALTY**See **CRIMINAL PROCEDURE**

Death chamber, apparatus to be provided by	
Commissioners	23-702
Electrocution prescribed	23-701
Executioner, assistants, appointment by Commissioners	23-702
Executions	23-704—23-706
Persons not to be present	23-705
Persons permitted to be present	23-704
Place of	23-706
Sentence required to be in writing	23-703

**DEATHS**See **ABATEMENT AND REVIVOR; DEAD HUMAN BODIES**

Copies of records, fee	6-103
Copies for official purposes excepted	6-103
Negligence causing death, action for damages	16-1201—16-1203
Registration, duty of health officer to enforce regulations	6-102

**DEBTS**See **STATUTE OF FRAUDS**

Assignment	28-2503
Attachment and garnishment	16-301
Liquidated, interest on principal to be included in judgments	28-2707
Prostitute, detaining for debt due house, penalty	22-2709
Voidable by statute of frauds	12-302
Wife's separate property, freedom from husband's debts	30-207

**DECEDENTS' ESTATES**See **ABATEMENT AND REVIVOR; EXECUTORS AND ADMINISTRATORS; JOINT CONTRACTS; WILLS**

Adoptive children, rights of	16-205
Assets	18-301
Appraisal	18-402
Appraisers dying or refusing to act	18-403
Claims against administrator, collector	18-305
Claims of testator against executor	18-303
Liability of sureties	18-303
Remedy for failure to inventory	18-304
Converting, penalty	22-1404
Discharge or bequest of debt on demand	18-302
Inclusion in inventory	18-301
Inventory	18-401
Co-executor or co-administrator	18-408
Collectors	18-407
Exceptions	18-401
General content	18-401
Specific contents	18-405
Specific exceptions	18-406
Notice of appraisement	18-404
Order for sale	18-602
Sale of personalty	18-601
Sale of realty	18-607
Bond to prevent	18-608
Proceedings for by creditors	18-612
Subject to dower	18-610
To satisfy debts and legacies	18-609
Trustee, appointment and bond	18-611
Sale of realty directed in will	18-603
Power of co-executors	18-605
Procedure	18-604
Survivor of several trustees	18-606
Bequest to female	18-722
Claims of creditors	18-501
Against nonresident decedents	18-501
Authentication prerequisite to discharge	18-502
Disputing	18-516
Distribution of residue	18-530
Docket	18-513
Entry does not toll limitations	18-514
Entry is not evidence of correctness	18-514



DECEDENTS' ESTATES—Continued	Sec.	DECEDENTS' ESTATES—Continued	Sec.
Claims of creditors—Continued		Dower and curtesy rights	18-201
Executors' and administrators' claims	18-511	Assignment by guardian	18-208
Oath	18-511	Definition of dower	18-201
To be passed by Probate Court	18-512	Devise of both personalty and realty	18-212, 18-213
Limit to bringing suits	18-518	Devise passing nothing	18-214
Made after distribution	18-525	Devises construed to be in lieu of dower	18-210
Meeting of creditors	18-521	Dower, forfeiture by living in adultery	18-203
Notice of distribution	18-522	Dower in equitable titles	18-202
Notice to file	18-526	Estates by the curtesy	18-215
Copy as evidence	18-529	Fraudulent assignment by guardian of heir	18-207
Prima facie evidence	18-528	Fraudulent judgments do not defeat	18-207
Proof	18-527	Husband's defaults do not defeat	18-207
Reporting	18-527	Jointure after marriage, election to take dower	18-205
Passing is not conclusive	18-517	Jointure, effect	18-206
Payment	18-519	Release of dower	18-204
Pleading limitation is discretionary	18-515	Absence of wife for 7 years	18-204
Priorities	18-520	Insanity of wife	18-204
Proving	18-503	Renunciation of devises	18-211
Affidavit or deposition made outside District	18-510	Restoration on eviction from jointure	18-209
Assigned instruments evidencing debt, oath of assignee	18-506	Right of quarantine	18-201
Commercial papers	18-507	Drawee of bill of exchange dead, presentment of bill	28-921
Executors' and administrators' claims	18-511	Estate taxes	47-1603—47-1629
Judgment or decree	18-504	Executor's deed, form	45-301
Open account	18-509	Income tax	
Rent	18-508	Application of	47-1524
Specialties, bills, checks, notes	18-505	Bequests and devises exempted	47-1504
Rejecting	18-516	Gross income prior to death	47-1511
Retention of assets for unexhibited claims	18-523	Returns by fiduciary	47-1523
Retention of assets pending litigation	18-524	Inheritance and estate taxes	47-1601—47-1629
Continuing decedent's business	20-116	Law of descent	18-101
Criminal offenses	22-1404, 22-1405	Advancements	18-108
Concealing writings	22-1405	Antenuptial children	18-106
Converting assets	22-1404	Children born after intestate's death	18-103
Misusing property	22-1404	Descent from trustees	18-102
Secreting writings	22-1405	Descent through alien	18-110
Will, destroying, mutilating, secreting, stealing	22-1403	Descent when heir kills decedent	18-109
Distribution of intestate's surplus estate	18-701	Escheat of lands	18-111
Death of distributee	18-713	Heirs, other than children	18-103
Escheatment	18-717	Illegitimate children	18-107
Illegitimate children	18-716	Kindred of same degree	18-105
Partial	18-720	Kindred or whole- and half-blood	18-104
Posthumous children	18-714	Order of descent	18-101
Specific property	18-718	Limitation of actions	12-202
Distribution	18-719	Meeting of legatees, next of kin	18-723
Sale	18-719	National Guard officer's, liability for equipment	39-511
Surplus over spouse's share	18-705	Notice of dishonor of negotiable instruments	28-710
Brother or sister and descendants	18-709	Posthumous children	
Brothers and sisters to share equally	18-710	Birth defeats future estates dependent on parents' death without heirs, issue or children	45-204
Children	18-706	Take future estates limited to heirs, issue, or children as though living at ancestor's death	45-204
Collateral relations	18-711	Presentment of negotiable instruments for payment	28-607
Grandchildren	18-707	Property clerk, property delivered to by police, disposition made of	4-159
Grandfather and grandmother	18-712	Property inherited, exemption from income tax	47-1504
Parents	18-708		
When surviving spouse takes one-half	18-704		
When surviving spouse takes one-third	18-703		
When surviving spouse takes whole	18-702		
Whole- and half-blood kindred	18-715		
Distribution of specific bequests	18-721		



**DECEDENTS' ESTATES—Continued**

Real property, assessment in name of deceased person 47-701

**DECEIT**

See **FRAUD**

**DEDICATION**

Beach Parkway, exchanged land 8-122  
 Glover Parkway and Children's Playground 8-162  
 New alleys in place of existing alleys 7-303  
   Acceptance by Commissioners 7-303  
   Future ownership of closed alleys 7-303  
   Original alley being closed, agreement as to ownership of land 7-303  
   Recording of agreements and plats 7-303  
 Owners petitioning for closing of alleys, dedication of new ways 7-306  
 Readjustment of streets, highways, and alleys 7-403  
 Rock Creek Park 8-146  
 Rock Creek Park land, acceptance 8-150  
 Streets and other public ways 1-614  
 Streets by landowners, conditions 7-117  
 Whitehaven Parkway, exchange of land with property owners 8-119

**DEEDS**

See **COMMISSIONERS OF DEEDS; TRUST DEEDS**

Acknowledgments 45-401—45-412  
   Foreign country 45-404  
   Guam, Samoa, and Canal Zone 45-405  
   Philippine Islands and Puerto Rico 45-406  
   Outside District 45-403  
   Within District 45-402

"Bargain and sell" pass whole estate in absence of contrary showing 45-202

Commissioner of deeds, power to acknowledge 1-401

Contingent estates conveyable by deed 45-101

Conveyances by husband to wife 30-205

**Covenant**

  Against having encumbered 45-307  
   Effect when used in deeds 45-303  
   For further assurances 45-308  
   Of quiet enjoyment 45-306  
   Running with land, married women 30-202

Deeds of corporations, requisite 45-302

Delivery, effect as notice 45-501

Description of property by subdivision 7-110

Description of property, reference to plat 1-622

"Die without issue," meaning 45-205

District executing, procedure 1-214

Earliest recorded deed has priority 45-502

Effective date 45-501

  As to creditors 45-501

  As to parties 45-501

  As to subsequent bona fide purchasers 45-501

  As to subsequent mortgagees 45-501

Estates good as executory devise is conveyable by deed 45-101

Executor's deed, form 45-301

**Fee-simple estate**

  Created unless contrary intention appears 45-201

  Form 45-301

  Words of inheritance unnecessary to create 45-201

**DEEDS—Continued**

Foreign deeds as evidence 14-402

**Future estates**

  Conveyable by deed 45-101

  Dependent on person's death without heirs, issue, or children defeated by birth of his posthumous children 45-204

  Limited to heirs, issue, or children, posthumous children take as though living at ancestor's death 45-204

Gifts to charitable uses, rule against perpetuities inapplicable 45-102

"Grant" passes whole estate in absence of contrary showing 45-202

"Have no issue" meaning 45-205

Husband and wife, form 45-301

**Life estates**

  Conveyable by deed under seal 45-106

  Form 45-301

Married woman's acknowledgment, notary's power to take 1-511

Notary's power to take acknowledgment 1-511

  Fee 1-514

Not to be executed or acknowledged by attorney 45-401

Present estate conveyable by deed 45-101

Priority of first deed recorded 45-502

Real property, sale by Commissioners of District 9-303

**Recording**

  Defective deeds not be recorded 45-503

  Effect as notice 45-501

  Effective date 45-501

  Not to be made when 45-503

  Priority 45-502

  Record as evidence 45-504

Remainder to heirs of life tenant does not give him fee-simple estate 45-203

Rule in Shelley's case abolished 45-203

"That he will warrant generally the property hereby conveyed," effect in deeds 45-304

Trust deeds for particular purposes, form 45-301

Trust deeds, married women authorized to execute 30-204

Trustee's deed under decree, form 45-301

Vested estates conveyable by deed 45-101

Warranties 45-304, 45-305

  General warranty 45-304

  Special warranty 45-305

Wife empowered to convey separate property 30-201

"With general warranty" effect in deeds 45-304

Words of inheritance unnecessary to create fee-simple estate 45-201

**DEEDS OF TRUST**

See **TRUST DEEDS**

**DEFAULT**

See **STATUTE OF FRAUDS**

Mandamus proceedings 16-1008

Proof in defaulted divorce actions 16-419

Replevin 16-1807

**DEFINITIONS**

See **NEGOTIABLE INSTRUMENTS**

Abortion 22-201



DEFINITIONS—Continued	Sec.	DEFINITIONS—Continued	Sec.
Acceptance		Bills of exchange	28-901
Relating to negotiable instruments	28-101	Blackmail	22-2305
Statute of frauds under uniform sales act	28-1104	Blank indorsement	28-305
Under Uniform Sales Act	28-1308	Blasphemy	22-1107
Acceptance of bill of exchange	28-907	Board of Pharmacy, under Uniform Narcotic Drug Law	33-401
Accommodation party, Negotiable Instrument Law	28-206	Bond	28-2401
Action		Bonding business	23-601
Relating to negotiable instruments	28-101	Bondsman	23-601
Under Uniform Sales Act	28-1606	Branch, Municipal Court	11-802
Under Uniform Warehouse Receipts Act	28-2203	Bribery	22-701
Administrative decision, zoning law	5-425	Broker	
Administrative officer of body, zoning law	5-425	Under Fire and Casualty Act	35-1303
Administrator	49-205	Under Life Insurance Act	35-302
Admitted assets, under Fire and Casualty Act	35-1303	Bucketing	22-1509
Adultery	22-301	Bucket shop	22-1509
Adult, Juvenile Court	11-906	Building, Architects Licensing Law	2-1018
Advertisement, dentistry, Regulatory Law	2-330	Bulk sales	28-1703
Affirmation	49-206	Burglary	22-1801
Agent		Business-chance broker	45-1402
Under General License Law	47-2307	Business-chance salesman	45-1402
Under Life Insurance Act	35-302	Buyer, under Uniform Sales Act	28-1606
Alcohol	25-103	Cannabis	33-401
Alcoholic beverages	25-103	Capital assets, under Income Tax Law	47-1506
Alien company		Certificate, relating to liens on motor vehicles	40-701
Under Fire and Casualty Act	35-1303	Certified milk	33-313
Under Life Insurance Act	35-302	Charter, regarding corporations for profit	29-239
Alley, Alley Dwelling Law	5-109	Check	28-1002
Alley dwelling	5-109	Child, Juvenile Court	11-906
Amendment, Zoning Law	5-425	Club, relating to alcoholic beverages	25-103
Animal	22-813	Coca leaves	33-401
Any officer, general rule	49-204	College, Prize Fight Law	2-1209
Anything of value	22-102	Commissioners	
Apartment house	5-312	Under Fire and Casualty Act	35-1303
Under general license law	47-2329	Under Life Insurance Act	35-302
Apothecary, under Uniform Narcotic Drug Law	33-401	Commodities, in bucket shopping	22-1509
Applicant for employment	47-2101	Common carrier, relating to public utilities Company	43-110
Applicant for help	47-2101	Under Fire and Casualty Act	35-1303
Apprentice in cosmetology	2-1301	Under Life Insurance Act	35-302
Arson	22-401	Construction, relating to highways, under Motor Fuel Tax Law	47-1902
Assistance, relating to old-age assistance	46-201	Contract, in bucket shopping	22-1509
Association, relating to cooperative associations	29-801	Contract to sell	28-1101
Authorized company, under Fire and Casualty Act	35-1303	Conversion of inhabited alleys fund	5-105
Bank		Cooperative basis, relating to cooperative associations	29-801
Relating to negotiable instruments	28-101	Corporation, under Income Tax Law	47-1543
Under Uniform Fiduciaries Act	28-2301	Cosmetology	2-1301
Barbering	2-1102	Court, Municipal Court	11-802
Barber instructor	2-1102	Cream	33-313
Bargain and sell, meaning in real property conveyances	45-202	Crime of violence	22-3201
Base period, relating to unemployment compensation	46-301	Cruelty to animals	22-801
Bearer, relating to negotiable instruments	28-101	Dealer	
Beer	25-103	Relating to registration of motor vehicles	40-101
Benefit year, relating to unemployment compensation	46-301	Under general license law	47-2307
Beverage	25-103	Defendant, under Uniform Sales Act	28-1606
Bigamy	22-601	Deficiency, under Income Tax Law	47-1530
Bill, relating to negotiable instruments	28-101	Deliverable state, under Uniform Sales Act	28-1606
		Delivery	
		Relating to negotiable instruments	28-101
		Under Uniform Sales Act	28-1606
		Under Uniform Warehouse Receipts Act	28-2203



DEFINITIONS—Continued		DEFINITIONS—Continued	
Demonstrator, cosmetology	2-1301	Fire escape	5-312
Dentistry		Fireproof	5-312
Practice of	2-315	Fire resisting	5-312
Unprofessional conduct	2-311	Fiscal year, under Income Tax Law	47-1543
Dentist, under Uniform Narcotic Drug Law	33-401	Flat	5-312
Department		Food	33-102
Under Fire and Casualty Act	35-1303	Foreign company	
Under Life Insurance Act	35-302	Under Fire and Casualty Act	35-1303
Dependent relative, relating to unemployment compensation	46-301	Under Life Insurance Act	35-302
Detective	47-2341	Foreign, under Income Tax Law	47-1543
Under general license law	47-2341	Fornication	22-1001
Detective agency, under general license law	47-2341	Fraternal benefit associations	35-901
Development, Alley Dwelling Law	5-112	Fresh pursuit	23-504
Die without issue, meaning in deeds and wills	45-205	Fungible goods	
Die without leaving issue, meaning in deeds and wills	45-205	Under Uniform Sales Act	28-1606
Disabled resident of the District of Columbia	31-502	Under Uniform Warehouse Receipts Act	28-2203
Disease	2-101	Future estate	45-810
Dispense, under Uniform Narcotic Drug Law	33-401	Future goods, under Uniform Sales Act	28-1105, 28-1606
Distributor, relating to motor fuel tax	47-1902	Gaming table	22-1507
District, under Fire and Casualty Act	35-1302	Gas corporations, relating to public utilities	43-113
Under Life Insurance Act	35-302	Gas plant, relating to public utilities	43-112
Dividend, under Income Tax Law	47-1543	General acceptance of bill of exchange	28-914
Divisible contract to sell or sale, under Uniform Sales Act	28-1606	General agent, under Life Insurance Act	35-302
Document of title to goods, under Uniform Sales Act	28-1606	General partners, relating to limited partnerships	41-102
Doing business, under Fraternal Benefit Associations Law	35-915	General power, relating to realty	45-1002
Domestic company		Gift enterprise	22-3401
Under Fire and Casualty Act	35-1303	Good faith, Fiduciaries Law	28-2301
Under Life Insurance Act	35-302	Goods	
Domestic, under Income Tax Law	47-1543	Under Uniform Sales Act	28-1606
Dower	18-201	Under Uniform Warehouse Receipts Act	28-2203
Drug	33-102	Grant, meaning in real property conveyances	45-202
Drugless healing	2-101	Gross income	47-1504
Dwelling, Alley Dwelling Law	5-109	Group life insurance	35-710
Earnings, relating to unemployment compensation	46-301	Have no issue, meaning in deeds and wills	45-205
Electrical corporation, relating to public utilities	43-115	Head of the department, relating to education	31-113
Electric plant, relating to public utilities	43-114	Head teacher	31-113
Elevator shaft	5-312	Healing arts	2-101
Employer, relating to unemployment compensation	46-301	Health, accident and life insurance companies	35-202
Employment, relating to unemployment compensation	46-301	Heater method of resurfacing street	7-628
Entered into or incurred	26-104	Highways, relating to motor fuel tax	47-1902
Executor	49-205	Holder	
Existing goods, under Uniform Sales Act	28-1105	Relating to negotiable instruments	28-101
Express warranty, under Uniform Sales Act	28-1112	Under Uniform Warehouse Receipts Act	28-2203
Extension or extensions, relating to public utilities	43-108	Holder for value	28-203
False advertising	22-1411	Holder in due course, negotiable instruments	28-402
Farm tractor, relating to registration of motor vehicles	40-101	Hospital, under Uniform Narcotic Drug Law	33-401
Fault, under Uniform Sales Act	28-1606	Hotel	5-312
Federal Narcotic Laws	33-401	Relating to alcoholic beverages	25-103
Feeble-minded person, relating to District Training School	32-603	Under General License Law	47-2328
Fiduciaries Law	28-2301	Housebreaking	22-1801
Fiduciary		House to house solicitors	47-2337
Under Income Tax Law	47-1543	Housing project, Alley Dwelling Law	5-112
Under Uniform Fiduciaries Act	28-2301	Ice cream	33-313
		Idiot	49-207
		Impairment of capital or surplus, under Fire and Casualty Act	35-1310
		Importer, relating to motor fuel tax	47-1902
		Improvement, relating to highways, under Motor Fuel Tax Law	47-1902
		Incest	22-1901



DEFINITIONS—Continued		Sec.	DEFINITIONS—Continued		Sec.
Indecent publication		22-2001	Needy blind person, relating to care of the blind		46-102
Indigent insane person		32-405	Negligence causing death		16-1201
Individual, under Income Tax Law		47-1543	Negligent homicide, under traffic regulations		40-606
Indorsement, relating to negotiable instruments		28-101	Negotiable warehouse receipts		28-1805
Industrial life insurance		35-302	Net income, under Income Tax Law		47-1503
In good faith			Net premium receipts		
Under Uniform Fiduciaries Act		28-2301	Relating to insurance company taxes		47-1806
Under Uniform Sales Act		28-1606	Under Life Insurance Act		35-302
Under Uniform Warehouse Receipts Act		28-2203	Net savings, relating to cooperative associations		29-801
Inhabited alley, Alley Dwelling Law		5-109	Non compos person		49-207
Insane person		49-207	Nonnegotiable warehouse receipts		28-1804
Insolvency, under Fire and Casualty Act		35-1309	Note broker		47-1708
Insolvent person, under Uniform Sales Act		28-1606	Note, relating to negotiable instruments		28-101
Instructor of cosmetology		2-1301	Nurses' registry		47-2101
Instrument			Oath		49-206
Relating to liens on motor vehicles		40-701	Occupation, under Minimum Wage Law		36-401
Relating to negotiable instruments		28-101	Offense, adult in Juvenile Court		11-919
Issue, relating to negotiable instruments		28-101	Officer, under Fire and Casualty Act		35-1303
Joint contracts		16-901	Official written order, under Uniform Narcotic Drug Law		33-401
Joint rates, relating to street railways		43-107	Operator cosmetologist		2-1301
Judge			Opium		33-401
Juvenile Court		11-906	Optometry		2-501
Municipal Court		11-802	Order		
Keeper, in bucket shopping		22-1509	Under Uniform Sales Act		28-1606
Kidnaping		22-2101	Under Uniform Warehouse Receipts Act		28-2203
Laboratory, under Uniform Narcotic Drug Law		33-401	Owner		
Liabilities			Relating to liens on motor vehicles		40-701
Under Fire and Casualty Act		35-1303	Relating to registration of motor vehicles		40-101
Under Life Insurance Act		35-302	Under Uniform Warehouse Receipts Act		28-2203
Lien information, relating to liens on motor vehicles		40-701	Paid or accrued, under Income Tax Law		47-1543
Liens, relating to liens on motor vehicles		40-701	Paid or incurred, under Income Tax Law		47-1543
Lodging house		5-312	Paper		22-101
Under general license law		47-2330	Park system		8-108
Lunatic		49-207	Park, under Traffic Act		40-602
Machine gun		22-3201	Partnership, under Income Tax Law		47-1543
Maintenance, relating to highways, under Motor Fuel Tax Law		47-1902	Partner, under Income Tax Law		47-1543
Managing cosmetologist		2-1301	Pasteurized		33-313
Manicurist		2-1301	Pasteurized milk		33-313
Manufacture, relating to alcoholic beverages		25-103	Payment in due course		28-619
Manufacturer, under Uniform Narcotic Drug Law		33-401	Perjury		14-102
Marine insurance		35-1101	Person		
Marine insurance company		35-1101	Boiler Inspection Act		1-702
Mattresses		6-601	Bucket shopping		22-1509
Relating to general license tax		47-2318	General rule		49-204
Under general license law		47-2318	Under Life Insurance Act		35-302
Meals, relating to alcoholic beverages		25-103	Under Uniform Fiduciaries Act		28-2301
Member, relating to cooperative associations		29-801	Under Uniform Narcotic Drug Law		33-401
Merchandise, under general license law		47-2307	Under Uniform Sales Act		28-1606
Milk		33-313	Under Uniform Warehouse Receipts Act		28-2203
Minor street		7-301	Physician, under Uniform Narcotic Drug Law		33-401
Minor, under Minimum Wage Law		36-401	Pipe-line company, pertaining to public utilities		43-121
Motor vehicle			Pistol		22-3201
Relating to motor fuel tax		47-1902	Place in which cosmetology practiced		2-1301
Relating to registration of motor vehicles		40-101	Plaintiff, under Uniform Sales Act		28-1606
Under Traffic Act		40-602	Pneumatic tire, relating to registration of motor vehicles		40-101
Motor vehicle fuel, relating to motor fuel tax		47-1902	Podiatry		2-711
Narcotic drugs		33-401	Podiatry advertising		2-713
Necessaries, Uniform Sales Act		28-1102	Podiatry, unprofessional conduct		2-707



## DEFINITIONS—Continued

	Sec.
Policy, under Fire and Casualty Act	35-1303
Policy writing agent, under Fire and Casualty Act	35-1303
Power, relating to realty	45-1001
Practice of healing arts	2-101
Practicing veterinary medicine	2-808
Primarily, relating to negotiable instruments	28-101
Primary liability	28-101
Principal, under Uniform Fiduciaries Act	28-2301
Private bank	47-1706
Private employment agency	47-2101
Professional bondsmen, business impressed with public interest	23-602
Property, under Uniform Sales Act	28-1606
Prostitution	22-2712
Public accountant	2-902
Public highway	
Relating to registration of Motor Vehicles	40-101
Under traffic act	40-602
Public utility	43-103
Pugilistic encounter	22-1106
Purchaser	
Under Uniform Sales Act	28-1606
Under Uniform Warehouse Receipts Act	28-2203
Purchases, under Uniform Sales Act	28-1606
Purchase, under Uniform Warehouse Receipts Act	28-2203
Qualified acceptance of bill of exchange	28-914
Quality of goods, under Uniform Sales Act	28-1606
Rape	22-2801
Raw milk	33-313
Real estate broker	45-1402
Real estate salesman	45-1402
Reasonable time, relating to negotiable instruments	28-101
Reciprocal, under Fire and Casualty Act	35-1303
Reckless driving, under traffic regulations	40-605
Reconstructed cream	33-313
Reconstructed milk	33-313
Reconstruction, relating to highways, under Motor Fuel Tax Law	47-1902
Registry number, under Uniform Narcotic Drug Law	33-401
Residence, relating to inheritance and estate taxes	47-1628
Resident, relating to inheritance and estate taxes	47-1628
Restaurant	
Relating to alcoholic beverages	25-103
Under general license law	47-2327
Restrictive indorsement	28-307
Reversion	45-809
Roadway, Street Improvement Law	7-623
Robbery	22-2901
Rooming house	5-312
Salaries company employee, under Fire and Casualty Act	35-1303
Sale	
Relating to alcoholic beverages	25-103
Under Uniform Narcotic Drug Law	33-401
Under Uniform Sales Act	28-1101—28-1606
Sales in bulk	28-1703
Savings returns, relating to cooperative associations	29-801

## DEFINITIONS—Continued

	Sec.
Sawed-off shotgun	22-3201
School	
Healing Acts Practice Act	2-101
Prize Fight Law	2-1209
Secondarily, relating to negotiable instruments	28-101
Secondary liability	28-101
Securities, in bucket shopping	22-1509
Sell, relating to alcoholic beverages	25-103
Seller, under Uniform Sales Act	28-1606
Service, relating to public utilities	43-104
Service, sewer	43-1517
Shareholder, under Income Tax Law	47-1543
Skimmed milk	33-313
Soliciting agent, under Fire and Casualty Act	35-1303
Solicitor, under Life Insurance Act	35-302
Special indorsement	28-305
Special partners, relating to limited partnerships	41-102
Special power relating to realty	45-1003
Specific goods, under Uniform Sales Act	28-1606
Speeding, under traffic regulations	40-605
Spirits	25-103
Standpipe	5-312
Stock, under Income Tax Law	47-1543
Street railroad	43-109
Street Railroad Corporation, relating to public utilities	43-110
Student cosmetologist	2-1301
Subornation of perjury	22-2501
Superintendent	
Under Fire and Casualty Act	35-1303
Under Life Insurance Act	35-302
Surplus	
Under Fire and Casualty Act	35-1303
Under Life Insurance Act	35-302
Table, relating to alcoholic beverages	25-103
Tavern, relating to alcoholic beverages	25-103
Taxable income, relating to income tax	47-1502
Taxable year, under Income Tax Law	47-1543
Taxpayer, under Income Tax Law	47-1543
Telegraph corporation	
Pertaining to public utilities	43-120
Telephone corporation, relating to public utilities	43-117
Telephone line, relating to public utilities	43-118
Tenement house	5-312
Theatrical employment agency	47-2101
"The court," Juvenile Court	11-906
Ton	10-108
Trade or business, under Income Tax Law	47-1543
Traffic, under Traffic Act	40-602
Trailers, relating to registration of motor vehicles	40-101
Transacting business, under Fraternal Benefit Association Law	35-915
Unauthorized company, under Fire and Casualty Act	35-1303
Undertaking	28-2402
Unemployed, relating to unemployment compensation	46-301
Unpaid seller, under Uniform Sales Act	28-1401



DEFINITIONS—Continued		Sec.	DENTISTRY—Continued		Sec.
Unreasonable time, relating to negotiable instruments		28-101	Anesthetist, exemption from law		2-317
Usury		28-2703	Application for license		2-307, 2-308
Vagrancy		22-3301	Citizenship, aliens, naturalization		2-307
Valid claim, relating to unemployment compensation		46-301	Examination or admission without examination		2-308
Value			False application or representation, penalty		2-320
Negotiable Instrument Law		28-202	Form and contents, verification		2-307
Relating to negotiable instruments		28-101	Proof of eligibility and educational requirements		2-307
Under Uniform Sales Act		28-1606	Reciprocity with other States		2-308
Under Uniform Warehouse Receipts Act		28-2203	Written application required		2-307
Vehicle, under traffic act		40-602	Associate name, use in practicing prohibited, penalty		2-316
Veterinarian, under Uniform Narcotic Drug Law		33-401	Assuming title of dentist, penalty		2-320
Vocational rehabilitation		31-502	Board of Dental Examiners		2-301
Voting trust agreement, under Life Insurance Act		35-531	Annual report, contents		2-306
Wages, relating to unemployment compensation		46-301	Appointed by Commissioners of District		2-301
Warehouseman, under Uniform Warehouse Receipts Act		28-2203	Bond of secretary-treasurer		2-302
Warehouse Receipts Act		28-2203	Books and papers, power to compel production		2-304
Water-power company, relating to public utilities		43-116	Certified copies of record, admissibility and evidence		2-303
Weapons		22-3201	Corporation counsel legal adviser		2-305
Wholesaler, under Uniform Narcotic Drug Law		33-401	Dental college officer or faculty member ineligible		2-301
Wine		25-103	Disobedient witnesses, punishment for contents		2-304
Woman, under Minimum Wage Law		36-401	Expenses not to exceed receipts		2-313
Writing		22-101	Fee for each certificate issued		2-313
Written, relating to negotiable instruments		28-101	Fees of witnesses		2-304
Wrongful death		16-1201	Investigators, power to employ		2-305
Zoning regulations, terms in		5-425	Licensees and registrants, records		2-303
DELICATESSENS			Nominations for appointment by dental society		2-301
License		47-2327	Numbers of members		2-301
DELIVERY			Per diem of members		2-313
Definition, Negotiable Instrument Law		28-101	President		2-302
Negotiable instruments		28-116, 28-117	Purpose of rules and regulations		2-302
Conditional delivery, right to show		28-117	Purpose of rules of Board		2-302
Essential to completion		28-117	Qualifications of members		2-301
Holder in due course, conclusive presumption		28-117	Record kept of proceedings		2-303
Immediate parties to instruments		28-117	Rules and regulations, power to adopt		2-302
Incomplete instruments, negotiation without authority, validity		28-116	Seal		2-303
Making for special purpose, right to show		28-117	Secretary-treasurer		2-302, 2-305
Presumption concerning		28-117	Term of office		2-301
Remote parties to instrument		28-117	Witnesses, power to call and examine		2-304
DEMAND INSTRUMENTS			Certificate for postgraduate work, forgery or fraudulent use, penalty		2-319
Negotiable Instrument Law		28-108	Corporate name		
DEMURRER			Practicing under, unprofessional conduct		2-311
See PLEADINGS			Use in practicing prohibited, penalty		2-316
Judgment on		13-206	Deceased indigents, receipt of bodies by schools		2-203—2-207
DENTAL COLLEGES			Declaration of policy		2-310
See MEDICAL AND DENTAL COLLEGES			Definitions of terms used		2-330
DENTISTRY			Dental hygienists		2-322—2-328
Administrative expenses of law, payment		2-313	Annual registration fee of hygienist		2-327
Advertising			Application for license		2-323
Definition		2-330	Certificate fee		2-326
Revocation of license		2-311	Compliance with law required		2-322
			Educational requirements		2-323
			Employment by licensed dentist, limitation on number		2-325



DENTISTRY—Continued		DENTISTRY—Continued	
Dental hygienists—Continued		Practice declared to affect public health and safety	
Examination for license	2-324		2-310
Fee for license	2-323	"Practice" defined	2-315
Health Department of District, right to employ	2-325	Practicing under assumed name prohibited	2-316
Issuance of license	2-324	Practicing under false or assumed name, unprofessional conduct	2-311
License fee	2-326	Practicing without license, penalty	2-328
Nature and character of work limited	2-325	Radiographic laboratory, exception from law	2-315
Photographs, filing with application required	2-323	Reciprocity, admission to practice	2-308
Practice declared to affect public health and safety	2-327	Register of name of dentist, publication	2-314
Practicing without license, penalty	2-328	Registration card, failure to display, penalty	2-318
Practitioners from other States, admission to practice, reciprocity	2-326	Registration of applicants from other States	2-308
Public institutions, right to employ	2-325	Revocation or suspension of licenses to practice	2-311, 2-312
Qualifications	2-323	Annual registration fee, nonpayment	2-314
Registration of license	2-324	Appeal to Court of Appeals	2-312
Registration required	2-322	Dental hygienist, improper employment	2-325
Revocation or suspension of license, ground	2-325	Duration, determination by court	2-312
Services permitted to be performed	2-325	Employment of unlicensed operatives	2-311
Dental internes, use in hospitals	2-302	Grounds	2-311
Dentist, definition under Uniform Narcotic Drugs Law	33-401	Petition, verification	2-312
Dentists from without District, right to practice in District	2-317	Practicing under improper name	2-316
Diploma, forgery or fraudulent use, penalty	2-319	Procedure	2-312
Examination of applicants for license	2-308	Proof of misconduct or professional incapacity	2-312
Graduates from dental college, waiver of examination	2-308	United States District Court, jurisdiction	2-311
Held twice yearly	2-302	Rules and regulations of Board of Examiners, effective date	2-331
Impersonating another, penalty	2-320	Mailing of notice to registrant	2-331
Subject in which examined	2-308	Publication	2-331
Time and place held, determination	2-302	Secretary-treasurer of Board of Examiners	2-302, 2-305
Exemptions from act	2-317	Bond	2-302
False name, practicing under prohibited	2-320	Election	2-302
Fees for licenses and registration	2-313, 2-314	Enforcement officer of Dentistry Law	2-305
Annual registration fee, payment, penalty	2-314	Students of dentistry in clinic room, exemption	2-317
Application for license	2-313	Subject to regulation and control in public interest	2-310
Dental hygienists	2-323, 2-326, 2-327	Superintendent of police, duties	2-305
Duplicate license	2-313	United States Army, Navy, or Health Service dentist, exemption	2-317
Purposes for which used	2-313	"Unprofessional conduct" defined	2-311
Reregistering after discontinuing practice	2-314	Violation of law, second or subsequent offenses, penalty	2-329
License to practice	2-309	DEPARTMENT OF AGRICULTURE	
Display required, penalty	2-318	Plant disease and insect pest control measures	
Forgery or fraudulent use, penalty	2-319		6-904, 6-905
Issuance by board	2-309	Potomac Park ground, temporary occupancy	
Loss of license, issuance of duplicate	2-309		8-156
Registered with Board of Health	2-309	DEPARTMENT OF HEALTH	
Narcotics, prescription	2-610, 2-611	See HEALTH AND SAFETY; HEALTH OFFICER	
Content	2-610	Employees	
Professional use	33-409	Dairies, not to be employed by	
Restrictions on right to issue	2-610		33-320
Pharmacy Law, exception from	2-601	Dairy supplies, not to deal in	
Photograph of applicant for license	2-307		33-320
Physicians and surgeons, qualified exemption from law	2-317	Health officers to enforce adulterated food, drugs ban	
Police Court, jurisdiction of violations of law	2-305		33-104
Postgraduate classes or schools	2-321	Inspection of private hospitals and asylums	
Approval by Board of Examiners	2-321		32-302
Penalty for violating law	2-321	DEPARTMENT OF PUBLIC WELFARE	
		Director of public welfare, advances to by disbursing officer	
			47-115
		DEPARTMENT OF SCHOOL ATTENDANCE AND WORK PERMITS	
		See EDUCATION	



DEPARTMENT OF WEIGHTS, MEASURES, AND MARKETS	Sec.	DEPOSITIONS	Sec.
See WEIGHTS, MEASURES, AND MARKETS		See CRIMINAL PROCEDURE	
DEPENDENT AND NEGLECTED CHILDREN		Administration of oath	14-201
See BOARD OF PUBLIC WELFARE; CHILDREN;		Aged and infirm witness	14-201
CRUELTY TO CHILDREN; DESERTION; PARENT		Before whom taken	14-201
AND CHILD		Commissioner of deeds, power to take	1-401
Abandoned infants, liability of District for		Commissions from courts outside district	14-204
care	3-111	Commission to take depositions	14-203
Antecedents investigated	3-118	De bene esse	14-201
Application for home care	32-701	Method of taking	14-201
Filing with Board of Public Welfare	32-701	Nonresident of District	14-201
Who may file	32-701	Notary's power to take	1-503, 1-511
Assistance, duty of Board of Public Welfare	3-110	Fees and charges	1-514
Board of Public Welfare	32-701—32-710	Restriction	1-503
Applications for home care to be filed		Notices required	14-201
with	32-701	Only used when witness unavailable	14-201
Employees for home care	32-710	Probate Court	11-519
Finding on application for home care	32-703	Public Utilities Commission, use by	43-420
Investigation of applications for home		Tender of witness fee, effect	14-202
care	32-702	Transmittal to court	14-201
Order for monthly allowance for home		Where taken	14-202
care	32-703	Witnesses	
Records of home care	32-706	In foreign country, method	14-201
Rules and regulations for home care	32-707	Likely to leave District	14-201
Supervisory powers	3-116	Summoning	14-201
Commitment by courts of competent jurisdic-		Unable to attend during trial	14-201
tion	3-114	DEPOSITS IN COURT	
Eleemosynary or correctional institutions,		Eminent domain proceedings, land for streets	7-215
liability for maintenance	3-111	Title to property in dispute or uncertain	7-215
Placing in private homes or private insti-		DEPUTIES	
tutions	3-114	Clerk of Court of Appeals	11-204
Religious faith considered in placing		Purchasing officer	1-305
child	3-114	DEPUTY CHIEF ENGINEERS	
Visitation by Board of Public Welfare	3-114	Fire Department	4-402, 4-404
Wards of Board of Public Welfare	3-114	Salary	4-405
Contracts for care of	3-115	DEPUTY FIRE MARSHALS	
Discharge from guardianship by Board of		Fire Department	4-404
Public Welfare	3-125	Salary	4-405
Environment investigated	3-118	DESCENT AND DISTRIBUTION	
Home care	32-701—32-710	See DECEDENTS' ESTATES	
Allowance	32-703, 32-704	DESERTION	
Alteration of conditions	32-704	See CHILDREN	
Conditions	32-703	Deserting family	22-903—22-906
Discontinuance	32-703	Evidence	22-904
Duration	32-704	Juvenile Court clerk to account	22-906
Review of order	32-704	Payment to family from workhouse	22-905
Annual estimates	32-710	Deserting minor child	22-903
Application for	32-701	Deserting wife	22-903
Appointment of supervisor, inspectors	32-710	Failure to provide for children, penalty	22-902
Construction of words	32-709	Ground for divorce	16-403
Obtaining allowance by fraud, penalty	32-708	Ground for legal separation	16-403
Order for monthly allowance	32-703	DETAINER	
Records	32-706	See FORCIBLE ENTRY AND DETAINER	
Rules and regulations	32-707	DETECTIVE AGENCIES	
Visitation by representative of Board of		See DETECTIVES	
Welfare	32-705	Employees of, employment prohibited	1-317
Placement in suitable homes or public insti-		License	47-2341
tutions	3-123	Approval by major and superintendent	
Religious faith considered	3-123	of police	47-2341
Religious freedom	3-123	Fee	47-2341
Temporary care and maintenance by Board of		Revocation	47-2341
Public Welfare, duration except on order			
of Juvenile Court	3-117		
Temporary provision for care	3-114		



<b>DETECTIVE AGENCIES—Continued</b>		Sec.	<b>DIRECTOR OF PUBLIC WELFARE—Con.</b>	Sec.
Regulation		47-2341	Compensation determined by Classification Act	3-105
Subject to police laws		47-2341	Discharge from office	3-105
<b>DETECTIVES</b>			Nomination for appointment by Board of Public Welfare	3-105
Detailing private policemen for detective work	4-110		Office created	3-105
Intelligence office keepers, Police Department, powers and duties	4-147, 4-148, 4-150		Qualifications	3-105
Examination of books and premises	4-148		<b>DIRECTOR OF SOCIAL WORK</b>	
Penalty for interfering with officer	4-150		See JUVENILE COURT	
Supervision and inspection	4-147		<b>DISBARMENT</b>	
Private detectives	4-168—4-175		See ATTORNEYS	
Bond required, amount	4-169		<b>DISBURSING OFFICER</b>	
Compromise of felony or unlawful act prohibited	4-175		See TAXATION AND FISCAL AFFAIRS	
"Detective" defined	47-2341		Appointment	47-112
Duty on making arrest	4-172		Duties	47-112—47-119
Filing of bond	4-170		<b>DISEASES</b>	
License	47-2341		Definition	2-101
Acting without, prohibited	47-2341		Regulations for prevention and control, powers of Commissioners	6-118
Approval of major and superintendent of police	47-2341		<b>DISMISSAL OF ACTIONS</b>	
Fee	47-2341		Alleys or minor streets, condemnation proceedings, damages exceeding benefits	7-324
Revocation	47-2341		Closing and readjusting streets, dismissal by Commissioners before verdict confirmed	7-407
Penalty for acting as without complying with law	4-173		Eminent domain proceedings, streets, damages exceeding benefits	7-219
Permitting suspect to go unarrested prohibited	4-175		<b>DISORDERLY CONDUCT</b>	
Police laws and regulations made applicable to	4-174		Affray, penalty	22-1101
Receiving compensation from person arrested or liable to arrest prohibited	4-175		Assembly, unlawful, penalty	22-1107
Record of name, age, residence, and nationality	4-170		Balloons, flying, penalty	22-1117
Regulation	47-2341		Bonfires, kindling	22-1113
Reports	4-174		Disturbing religious congregations, penalty	22-1114
Subject to police laws	47-2341		Dogs	22-1110, 22-1111
Withholding information prohibited	4-175		Dangerous, allowing at large	22-1111
<b>DETERMINATION</b>			Female in heat, allowing at large	22-1111
Suits to determine validity of marriage	16-422		Urging to fight	22-1110
<b>DEVELOPMENT</b>			Driving, riding, leading animals on footways, penalty	22-1118
Definition, Alley Dwelling Law	5-112		Dwelling	22-1102—22-1104
<b>DEVICES</b>			False fire alarms, penalty	22-1119
See DECEDENTS' ESTATES; WILLS			Fights with animals	22-1105
To attesting witnesses void	19-104		Foreign consular and diplomatic officers, property	22-1115, 22-1116
<b>DIETETICS</b>			Interference with	22-1115
Exemption from Healing Arts Practice Act	2-134		Penalty	22-1116
<b>DIGITALIS</b>			Indecent exposure	22-1112
Poison, sale, restrictions	2-612		Kites, flying, penalty	22-1117
<b>DIPLOMA</b>			Parachutes, flying, penalty	22-1117
Altering or forging evidence of graduation in healing arts	2-126		Playing in streets, penalty	22-1108
<b>DIPLOMATS</b>			Prize fights	22-1105
Interference with	22-1116		Throwing stones in streets, penalty	22-1109
<b>DIRECTOR OF MOTOR VEHICLES AND TRAFFIC</b>			Tobacco, furnishing to minors	22-1120
Use of motor fuel tax proceeds for expenses	47-1901		<b>DISORDERLY HOUSES</b>	
<b>DIRECTOR OF PUBLIC WELFARE</b>			See ASSIGNATION; HOUSES OF PROSTITUTION; PANDERING; PROSTITUTION	
See BOARD OF PUBLIC WELFARE			Debts contracted in, detaining female for	22-2709
Appointment by Commissioners	3-105		Jurisdiction of police court	11-604
Chief executive officer of Board of Public Welfare	3-105		Keeping, penalty	22-2722



**DISSOLUTION**

	Sec.
Corporations	29-701—29-729
Limited partnerships	41-115, 41-116, 41-130
Partnerships	41-201—41-204

**DISTRICT ATTORNEY**

Appointment by President	11-1001
Corporations, dissolution by quo warranto	29-719—29-724
Criminal Court term, duty to attend	11-323
Duties	11-1001
Ex officio member Healing Arts Licensure Commission	2-103
Fees and costs	11-1501
Docket fees	11-1502
Taxed as costs, when	11-1501
Healing Arts Practice Act, enforcement	2-137
Nurses, proceeding to revoke or suspend certificate, duties	2-407
Oath	11-1001
Administering	11-1002
Party to hearing on application for receiver for absentees', absconders' estates	20-701
Private detective's bond, forfeiture, suit against sureties	4-171
Quo warranto proceedings	
Refusal to institute	16-1603
Right to institute	16-1602
Street obstructions, suits for removal	7-1207
Vacancy, how filled	11-1103

**DISTRICT BOARDS AND COMMISSIONS**

See ACCOUNTANTS; ANATOMICAL BOARD; ARCHITECTS; BARBERS; BASIC SCIENCES; BOARD OF PUBLIC WELFARE; BOXING EXHIBITIONS; COMMISSIONERS OF DISTRICT OF COLUMBIA; COMMISSION OF FINE ARTS; COSMETOLOGISTS; DENTISTRY; HEALING ARTS PRACTICE ACT; INDETERMINATE SENTENCE AND PAROLE; INSANE PERSONS; INSANITARY BUILDINGS; NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NURSES; OPTOMETRY; PARKS AND PLAYGROUNDS; PHARMACY; PLUMBING; PODIATRY; POLICE AND FIREMEN'S RELIEF FUND; POLICE DEPARTMENT; STEAM AND OTHER OPERATING ENGINEERS; VETERINARIANS; ZONING REGULATIONS

Anatomical board	2-201—2-209
Board for the Condemnation of Insanitary Buildings	5-601
Board of Accountancy	2-903
Board of Assistant Assessors	47-604, 47-605
Board of Barber Examiners	2-1103
Board of Cosmetology	2-1302—2-1305
Board of Education	29-415, 31-401—31-406, 36-203
Board of Equalization and Review	47-605
Board of Examiners and Registrars of Architects	2-1001—2-1009
Board of Examiners in Medicine and Osteopathy	2-109
Board of Examiners in Midwifery	2-113
Board of Examiners in Naturopathy	2-106
Board of Examiners in Veterinary Medicine	2-801, 2-802
Board of Examiners of Drugless Healers	2-106—2-111

**DISTRICT BOARDS AND COMMISSIONS— Continued**

Board of Examiners of Steam and other Operating Engineers	2-1502
Board of Indeterminate Sentence and Parole	24-201
Board of Personal Tax Appeals	47-605, 47-1213
Board of Pharmacy	2-607—2-609, 33-403—33-405, 33-417, 33-422
Board of Podiatry Examiners	2-701—2-704
Board of Public Welfare	3-102—3-104, 32-501, 32-602, 32-701—32-710, 32-902
Board of Tax Appeals	47-1513, 47-1534, 47-2401—47-2412
Board of Zoning Adjustment	5-420
Boxing Commission	2-1201, 2-1202
Commission of Fine Arts	5-410
Commission on Licensure to Practice the Healing Art	2-103
Commission on Mental Health	21-308
Dental Examiners	2-301—2-331
National Capital Park and Planning Commission	8-101
Nurses Examining Board	2-401—2-411
Optometry Board	2-503—2-508
Plumbing Board	2-1401
Retiring and Relief Board, police and firemen	4-510
Zoning Advisory Council	5-417
Zoning Commission	5-412

**DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA**

See UNITED STATES DISTRICT COURT

**DISTRICT COURT TERM**

See UNITED STATES DISTRICT COURT

Crier for, appointment	11-312
Eminent domain proceedings, jurisdiction	11-324
Jurisdiction	11-324
Messenger for, appointment	11-312
Special term of United States District Court	11-311

**DISTRICT EMPLOYEES' RELIEF ASSOCIATIONS**

Exemptions from insurance company taxes 47-1808

**DISTRICT OF COLUMBIA**

See COMMISSIONERS OF DISTRICT OF COLUMBIA; CORPORATION COUNSEL; EMINENT DOMAIN; FIRE DEPARTMENT; MUNICIPAL ARCHITECT; POLICE DEPARTMENT; PURCHASING OFFICER

Acquisition of lands for District uses	16-601
Acquisition of lands in excess of needs	16-612
As defendant, limitation of actions	12-208
Asphalt plant, acquisition authorized	7-618 note
Body corporate for municipal purposes	1-102
Budget estimates	47-201—47-212
Claims against, expenses for witnesses and evidence to be included in budget estimates	47-208
Closing alleys on acquiring land	7-309
Property-owners' right of access preserved	7-309
Reversion of existing alleys to District	7-309
Commissioners officers of corporation	1-103
Contractors becoming surety for officers prohibited	1-210
Contracts, power to make	1-102
Corporate name	1-102



DISTRICT OF COLUMBIA—Continued	Sec.
Corporate powers	1-102
Corporation counsel and assistants	1-301, 1-302
Department of Weights, Measures, and Markets	10-101—10-103
Exemption from fees and costs	11-1519
Finances	47-101—47-2504
Fire department of District	4-401
Fiscal affairs	47-101—47-2504
Former corporation, continued existence for certain purposes	1-105
Injury, notice, limitation of actions	12-208
Insurance of property	1-816
Judgments against, interest rate	28-2701
Limitation of actions against	12-208
Maps and plats of prior corporations made property of District	1-106
Metropolitan Police District	4-101, 4-102
Municipal architect	1-306
Oaths taken by civil officers	1-308
Power to sue and be sued	1-102
Property custodian	1-309
Contents of reports	1-309
Property of	
Exemption from taxation	47-803
Purloining	22-2206
Property of preceding corporation vested in District	1-104
Public charges, limitation on liability for maintenance	3-111
Purchasing officer	1-304, 1-305
Real property, right to acquire and hold, purposes	1-105
Records of prior corporations made property of District	1-106
Revenue	47-101—47-2504
Sale of property unfit for service	1-818
Proceeds credited to appropriation	1-818
Seal	1-102
Successor of former corporation	1-104
Surveys and drawings made property of District	1-106
Taxation	47-101—47-2504
Taxes, power to enforce payment	1-105
Territorial area	1-101
Zoning districts, power to establish	5-413

#### DISTRICT OF COLUMBIA EMPLOYEES

See OFFICERS AND EMPLOYEES OF DISTRICT

#### DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

See UNEMPLOYMENT COMPENSATION

#### DISTRICT TRAINING SCHOOL

See PRISONS AND PRISONERS	
Admission of feeble-minded under 45	32-607
Authority to acquire site	32-601
Board of Public Welfare	
Annual inventory	32-604
Annual report to Commissioners of District	32-604
Appointment of superintendent	32-605
To make rules and regulations	32-604
To supervise and control	32-602
Commissioners of District to have jurisdiction over land	32-601

DISTRICT TRAINING SCHOOL—Continued	Sec.
Contracts of inmates, approval of District Court required	32-628
"Feeble-minded person" defined	32-603
Home and school for feeble-minded	32-601
Juvenile Court	32-620
Adjoining proceedings to have petition for admission prepared	32-620
Child before, apparently feeble-minded	32-620
Paroles	32-626
Patients becoming insane, transfer to Saint Elizabeth's Hospital	32-622
Person convicted of crime, court may order inquiry on commitment	32-621
Persons to be admitted	32-607
Petition for admission	32-608
Contents	32-608
Decree for placing in school	32-613
Dismissal and discharge	32-613
Examination by physicians	32-610
Filing in District Court	32-608
Hearings	32-612
Jury, when used	32-612
Persons who may file	32-608
Place of detention pending hearing	32-611
Proof to be taken	32-612
Summons and return	32-609
Warrant for custody of feeble-minded person	32-611
Petition for discharge	32-618
Causes for discharge	32-618
Content	32-618
Denial, not bar to subsequent petition	32-618
Who may file	32-618
Petition for variation of order	32-618
Private patients, bond	32-614, 32-617
Public patients	32-614—32-617
Classification as	32-614
Liability of estate for maintenance	32-615
May become private patients	32-617
Proceedings to charge responsible relatives with cost of maintenance	32-616
Removal of nonresident inmates	32-625
Rules and regulations	32-604
Sale of products, deposit of funds	32-606
Saving clause on invalidation	32-629
Superintendent	32-605
Appointment	32-605
Discretion in paroles	32-626
Qualifications	32-605
Removal	32-605
Sale of products	32-606
Service of process on inmates	32-627
Supervised by Board of Public Welfare	32-602
Title to land in name of United States	32-601
Transfers from National Training Schools	32-624
Violation of chapter, penalty	32-619
Violation of parole	32-626

#### DISTRICT UNEMPLOYMENT COMPENSATION BOARD

See UNEMPLOYMENT COMPENSATION	
Duties and authority	46-302—46-304, 46-308—46-318, 46-321
Establishment	46-315



DISTURBING RELIGIOUS CONGREGA- Sec.	DIVORCE—Continued	Sec.
TIONS	Questions of law and fact not to be referred	16-1701
Penalty	Residence requirement	16-401
	Cause occurring in District, period	16-401
	Cause occurring outside District, period	16-401
DIVIDENDS	Restoration of maiden or prior name	16-414
Alley dwellings, buildings and improvements,	Retention of dower rights	16-411
corporations, dividends limited	Retention of jurisdiction	16-413
	Alimony	16-413
DIVISION WALLS	Custody of children	16-413
See PARTY WALLS	Separate maintenance	16-414
Payment of adjoining owner for land occu- pied	Sequestration	16-410
	Service of process by publication	13-108
	Suit money, including counsel fees	16-410
	Suit to determine validity of marriage	16-422
	Uncontested cases	16-418
	Assignment of attorney	16-418
	Compensation of assigned attorney	16-418
DIVORCE		
See ANNULMENT; DOMESTIC RELATIONS	DOCKET	
Absolute ( <i>a vinculo</i> )	Adoption docket, inspection on court order only	16-206
Decree dissolves property rights	Creditors' claims, decedents' estates	18-513
Grounds	Judgment docket	15-104
Adultery	Municipal Court	11-713
Arising after legal separation	Small claims and conciliation branch	11-806
Conviction involving moral turpi- tude	Real property attachments	16-334
Desertion	Small claims and conciliation branch, Munici- pal Court	11-806
Issue, legitimacy not affected		
Legal separation for two years	DOCUMENTS	
Voluntary separation	See EVIDENCE	
Admissions not sufficient proof	Negotiable document of title	23-1211
Alimony		
Pendente lite	DOGS	
Permanent	Allowing at large	22-1111
When husband obtains	Dangerous	22-1111
Annulment of marriage	Female in heat	22-1111
Decree dissolves property rights	Collar bearing owner's name and tax tag required	47-2006
Grounds	Decoying dog away from master's house, penalty	47-2007
Additional causes	Dog tax	47-2001—47-2008
Bigamy	Keeping and running at large, power to regu- late	1-224
Lunacy	Liability of owner for damage	47-2005
Matrimonial incapacity	Muzzling, power to require	1-230
Nonage	Poundmaster, authority of	47-2003, 47-2008
Procuring marriage by fraud	Removing dog's collar or tax tag, penalty	47-2006
Issue of bigamous marriage, legitimacy	Running at large	47-2003, 47-2004
Issue of lunatic's marriage legitimate	Dogs wearing tax tag permitted, excep- tion	47-2004
Assignment of attorney, discretion of court	Impounding of dogs without tax tags	47-2003
Correspondent	Impounding of female dogs in heat	47-2003
Service, personal or by publication	Sale of impounded dogs	47-2003
To be made defendants	Urging to fight	22-1110
Custody of children, pending proceedings	Urging to frighten or bite	22-1110
Decrees, effective date		
Default, proof in	DOMES	
Enforcing orders for alimony or suit money	Fireproof construction	5-404
Enjoining disposition of property	Exception, pending permits, square 345	5-404
Jurisdiction to award property	Height, fireproof construction	5-405
Law not retroactive		
Legal separation ( <i>a mensa et thoro</i> )	DOMESTIC RELATIONS	
Grounds	See ADOPTION; ANNULMENT; CHILDREN; DIVORCE;	
Adultery	HUSBAND AND WIFE; MARRIAGE; MINORS;	
Conviction involving moral turpi- tude	PARENT AND CHILD	
Cruelty		
Desertion		
Voluntary separation		
Revocation on joint application		
Petition to District Court		
Proceedings as in equity		
Proof in defaulted cases		
Proof necessary to decree		



**DOMESTIC RELATIONS—Continued**

	Sec.
Marriage	30-101—30-117
Annulment	30-102—30-105
Property rights	30-201—30-216

**DONALDSON PLACE**

Abandonment in part authorized	7-123 note
--------------------------------	------------

**DONATIONS**

To institution of learning	29-406
----------------------------	--------

**DOORS AND OTHER OPENINGS**

Fire escapes and safety provisions	5-301—5-316
Fireproofing, when required	5-305

**DORMITORIES**

Nonfireproof buildings, limitation on height	5-401
--	-------

**DOVER'S POWDER**

Exception from Narcotic Act	2-610
-----------------------------	-------

**DOWER**See **CURTESY; DECEDENTS' ESTATES; PARTITION**

Assignment of, in partition	16-1302
Definition	18-201
Devises construed to be in lieu of dower	18-210
Discharge from dower	16-1306
Release	18-204
By wife in same or separate deed	30-216
Retention of dower rights in divorce	16-411

**DRAFT**See **NEGOTIABLE INSTRUMENTS**

"Bills of exchange" defined	28-901
Making, drawing, uttering with insufficient funds	22-1410

**DRAFTSMEN**

Architect's right to employ	2-1017
-----------------------------	--------

**DRAINAGE**See **SEWERS**

Buildings and lots, sewer connections	6-401—6-404
House drainage	
Inspection by plumbing inspector	1-727
Regulations, commissioner's power to adopt	1-725

**DRAWBRIDGES**

Submarine cables, use	7-1231
-----------------------	--------

**DRAWER**See **NEGOTIABLE INSTRUMENTS****DRIVE-IT-YOURSELF AGENCIES**

License	47-2332
---------	---------

**DRIVING, RIDING, LEADING ANIMALS ON FOOTWAYS**

Penalty	22-1118
---------	---------

**DRUG ADDICTS**See **NARCOTIC DRUGS**

Barber's registration certificate, refusal	2-1110
Committee	21-401
Application for discharge of	21-401
Appointment	21-401
Bond	21-401
Petition for	21-401
Powers and duties	21-401

**DRUG ADDICTS—Continued**

	Sec.
Dentist, revocation or suspension of license	2-311
Fiduciary's bond and undertaking	28-2403
Jury	21-401
Optometrists, suspension or revocation of license	2-516
Petition for committee	
Grounds	21-401
Persons entitled to make	21-401
Prescription by physicians, dentists, and veterinarians, restriction	2-611
Property, restoration of	21-401
Summons for hearing	21-401

**DRUGGISTS**See **PHARMACY**

License	47-2308
---------	---------

**DRUGLESS HEALING**See **HEALING ARTS PRACTICE ACT**

Basic sciences, knowledge of required	2-112
Board of Examiners	2-106, 2-111, 2-112
Chairman	2-106
Educational qualifications of members	2-111
Examination of applicants for license	2-106, 2-114—2-117
Number of members	2-106
Petition for appointment, contents	2-111
Preferences in appointing board members	2-111
Qualifications of members	2-106, 2-111
Reference of applicants for license to board	2-112
Resolution for appointment, contents	2-111
Secretary	2-106
Term of office of members	2-106
Definition, Healing Arts Practice Act	2-101
Examination as basis for issuing license	2-122
Educational requirements	2-122
Proof required of applicant for license	2-122
Reciprocity as basis for issuing license	2-121
Relicensing of practitioners licensed under prior law	2-120

**DRUGS**See **FOOD AND DRUGS; NARCOTIC DRUGS; PHARMACY**

Narcotic drugs	33-401—33-425
----------------	---------------

**DRUNKARDS**

Application for discharge of committee	21-401
Appointment of committee	21-401
Barber's registration certificate, refusal	2-1110
Committee	21-401
Bond	21-401
Powers and duties	21-401
Dentists, revocation or suspension of license	2-311
Fiduciary's bond and undertaking, in District Court	28-2403
Jury	21-401
Petition for committee	21-401
Grounds	21-401
Persons entitled to make	21-401
Police and firemen's relief allowance, discontinuance	4-513
Property, restoration of	21-401
Steam and other operating engineers' licenses, suspension or revocation	2-1505
Summons for hearing	21-401



DRY CLEANING ESTABLISHMENTS		Sec.	EDUCATION—Continued		Sec.
License		47-2317	Board of Education—Continued		
DUCKS			Children of veterans who lost lives in		
See GAME AND FISH LAWS			World War		31-1114
DUELLING			Classification of academic, scientific in-		
Assault for refusal to accept challenge	22-1103		struction in certain high schools		31-112
Challenger	22-1104		Classification to salary schedule in trade		
Leaving District to give or receive	22-1104		or vocational schools		31-613
Penalty	22-1102		Community center department, authority		31-605
DURESS			Composition		31-101
See SALES, UNIFORM ACT			Control of public schools vested in		31-101
Detaining female prostitute for debt, pen-			Defining valid excuses for absence		31-204
alty	22-2709		Designating number of rooms in ele-		
Negotiable instrument, causing defective title			mentary schools		31-119
to	28-405		Determination of general policies		31-103
Prostitution of females, penalty	22-2705, 22-2706		Employment of minors, orders regarding		
Warehouse receipts, negotiation, effect	28-2011		dangerous places of		36-203
DWELLINGS			Expenditure of funds		31-103
See ALLEY DWELLINGS			Franklin School may be used for offices		31-804
Adjustment of line of front with line of street			Free service, authority to accept		31-802
by surveyor	1-628		Free textbooks, providing	31-401—31-406	
Definition, Alley Dwelling Law	5-109		Granting use of school buildings		31-801
Frame dwelling, maximum height	5-406		Institutions of learning, licensing to con-		
Party-walls, location and placing by surveyor	1-628		fer degrees		29-415
Right to dispose of own refuse	6-507		Junior colleges, accrediting		31-120
Sewer connections	6-401		Limitation on appointment, promotion,		
DYEING ESTABLISHMENTS			transfer, and dismissal of school offi-		
License	47-2317		cials		31-102
EARNINGS			Meetings		31-101
Exemption	15-403		Members exempt from personal liability		31-101
EASTERN AVENUE VIADUCT			Members not to profit from school sup-		
Use by street-railway company, payment of			plies		31-1104
share of cost	7-515		Night schools, authority		31-605
ECGONINE			Occupational schools in elementary school		
See NARCOTIC DRUGS			level, authority		31-614
Coca leaves derivative	33-401		Power to expand normal schools		31-118
Record kept of receipts and sales	33-411		Providing for education of colored chil-		
EDES HOME			dren	31-1110, 31-1113	
Property exempt from taxation	47-819		Qualifications of members		31-101
EDUCATION			Removal of Superintendent of Schools		31-108
See COLUMBIA INSTITUTION FOR THE DEAF; IN-			Retirement of public school teachers		
STITUTIONS OF LEARNING; MEDICAL AND DEN-				31-701—31-720	
TAL COLLEGES			Sabbatical leaves, granting	31-632—31-637	
Americanization schools authorized	31-605		Secretary		31-101
Arms for high school cadets not to be in-			Teachers' Colleges, establishment		31-118
sured	31-1116		Terms of members		31-101
Assistant Superintendents of Schools	31-109		Textbooks, providing	31-401—31-406	
Authority to close certain streets and alleys for			To appoint inspectors for child labor		
schools	31-1108		cases		36-225
Board of Education	31-101—31-120		Trade or vocational courses in senior high		
Accepting and accounting for donations			schools, authority		31-614
for colored schools	31-1109		Vacation schools, authority		31-605
Americanization schools, authority	31-605		Children of veterans who lost lives in World		
Annual estimates	31-104		War		31-1114
Appointment of members by District			Children, placement in schools		31-1111
Court judges	31-101		Civil service, exception of school officers and		
Appointment of superintendent of schools	31-105		teachers		1-217
Appointment of teachers and employees	31-103		Colored children, education		31-1110
Assignment of teachers, school officials,			Colored deaf persons		31-1011
and employees to salary classes	31-617, 31-618		Colored schools, donations for		31-1109
			Columbia Institution for the Deaf	31-1001—31-1024	
			Community center authorized		31-605
			Compulsory school attendance	31-201—31-213	
			Absences in month to be reported		31-206
			Absence without valid excuse unlawful		31-204



EDUCATION—Continued		Sec.	EDUCATION—Continued		Sec.
Compulsory school attendance—Continued			Night schools authorized		31-605
Census of children between 3 and 18	31-208		Nonresident students	31-301—31-305	
Children between 14 and 16 excused after completing eighth grade	31-202		Admission free of charge	31-301, 31-303—31-305	
Daily record of attendance required	31-205		Admission of soldiers and sailors on duty at stations adjacent to District for special instruction free of charge	31-304	
Enrollment and withdrawals to be reported	31-209		Admission of students whose parents are employed officially or otherwise in the District, free of charge	31-303	
Failure to keep child in school, penalty	31-207		Children of Army, Navy, Marine Corps officers and men stationed outside District, admission without tuition	31-305	
Information for census, neglect or refusal to furnish, penalty	31-210		Children of employees of the United States stationed outside District, admission without tuition	31-305	
Instruction of residents between 7 and 16 required, duty of parent or guardian	31-201		Exemptions from tuition	31-301	
Juvenile Court given jurisdiction	31-213		May be admitted on payment of tuition	31-301	
Mentally, physically unfit, excused, to have specialized instruction	31-203		Taxes paid for previous year credited on tuition	31-302	
Valid excuses for absence defined by Board of Education	31-204		Tuition	31-301	
Compulsory vaccination against smallpox	31-1102		Board of Education to fix	31-301	
Corporations for	29-601		Exemption of students owning District property	31-301	
Deaf persons	31-1001—31-1024		Exemption of students paying taxes in District in excess of nonresident tuition	31-301	
Definitions			Exemption where parents are engaged in public work in District	31-301	
Head of the department	31-113		Exemption where parents pay taxes in excess of nonresident tuition	31-301	
Head teacher	31-113		Exemption where parents reside in District	31-301	
Department of school attendance and work permits	31-211		May be admitted on payment	31-301	
Absences in month to be reported to	31-206		Nonresident tuition, payable into treasury	47-126	
Authority to inspect attendance records	31-205		Organizations exempted from income tax	47-1502	
Census of children between 3 and 18	31-208		Principals of schools, duties	31-115	
Creation	31-211		Property used for, exemption from taxation	47-802	
Director, appointment	31-212		Proportionate division of moneys for white and colored schools	31-1112	
Enrollments and withdrawals to be reported to	31-209		Retirement of public school teachers	31-701—31-720	
Examination of employees	31-212		Annual actuarial evaluation of fund	31-715	
Director of Intermediate Instruction	31-110		Annual estimates	31-716	
Estimate of expenditures for public-school system	31-606		Annual report to Congress	31-715	
Examination of teachers	31-114		Annuitants of States, cities not covered	31-719	
Feeble-minded deaf persons	31-1009		Annuities under prior acts not affected	31-720	
Free textbooks	31-401—31-406		Annuity allowance	31-705	
Board of Education to provide	31-401		Application	31-720	
Elementary schools	31-401		Continuance in service deemed consent to deductions	31-712	
Expense	31-406		Continuous employment requirement in payment of retirement sum	31-703	
Junior high schools	31-401		Credit for public school service outside District	31-708	
Limitation on purchases	31-404		Robert Gould Shaw High School	31-1106	
Lost and destroyed, payment	31-403		School attendance and work permits department	36-209	
Parents and guardians liable for safe-keeping	31-403		School supplies, no school officials to profit	31-1104	
Sale or exchange by Board of Education	31-405		Seduction of pupil by teacher, penalty	22-3002	
Senior high schools	31-401		Sites for school buildings, acquisition	1-812	
To be loaned to pupils	31-402		Power to acquire	1-105	
To remain property of District	31-402		Smallpox, compulsory vaccination against	31-1101	
Head of department, definition and duties	31-113		Superintendent of schools	31-105	
Head teacher, definition and duties	31-113		Acting superintendent	31-107	
Healing Arts Practice Act, "schools" defined	2-102		Appointment	31-105	
Indigent blind persons	31-1019, 31-1020				
Janitors to make minor repairs	31-1105				
John A. Chamberlain Vocational School	31-1107				
Junior colleges, accrediting	31-120				
Lenox Vocational School	31-1107				
Masculine pronoun to include feminine	31-117				
Medical and dental colleges	31-901—31-905				
Military training, compulsory in high schools	31-1103				
M Street High School (old)	31-1106				
New buildings, regard for future enlargement	1-812				



EDUCATION—Continued	Sec.	EDUCATION—Continued	Sec.
Superintendent of Schools—Continued		Teachers, school officers and employees—	
Assistant superintendents	31-109	Continued	
Authority to act between meetings of		Promotions to teaching and administra-	
Board of Education	31-106	tive principal	31-629
Director of intermediate instruction	31-110	Raising trade or vocational schools to rank	
Duties generally	31-105	of junior high schools in regard to sal-	
Removal	31-108	aries	31-611—31-615
Seat on Board of Education	31-105	Research assistants, appointment, classi-	
Term	31-105	fication and assignment	31-623
Supervisor of manual training	31-111	Retirement	31-701—31-720
Supplies for military education in high school		Sabbatical leave of absence	31-632—31-637
	31-1115	Filling places with temporary em-	
Teachers' Colleges	31-118	ployees	31-632, 31-635
Teachers, school officers and employees		Grant by Board of Education	31-632
	31-601—31-631	Inclusion in promotion and retire-	
Administrative principals with 16 or more		ment time	31-636
rooms, salaries	31-610	Limitation on number granted	31-632
Annual substitute teachers, appointment,		Meaning of words	31-637
qualifications and assignment	31-603	Officers, salary during leave	31-635
Assignment and promotion	31-628	Report of use of time, effect of failure	
Assignment of those in service July 1, 1924		to make	31-633
	31-621	Teachers' salaries, amount during	
Assignment to salary classes	31-617, 31-618	leave	31-634
Assistant principals, salaries	31-610	Salaries	31-608—31-619
Automatic annual salary increases	31-626	No discrimination on account of sex	31-608
Board of Examiners	31-601	Payment	31-609
Chief examiners	31-602	School attendance and work permits de-	
Composition	31-601	partment, salaries	31-610
Designation of members	31-601	Attendance officers	31-610
Community center department salaries	31-610	Census inspectors	31-610
Community secretaries	31-610	Chief attendance officer	31-610
Director	31-610	Director	31-610
General secretaries	31-610	School librarians' salaries, average not to	
Computation of pay	31-630	exceed that of free public library em-	
Computation of salaries on promotion	31-627	ployees	31-616
Directors of departments, salaries	31-610	Senior high school and normal school	
Directors of special subjects, salaries	31-610	teachers' salaries	31-610
Division of time	31-630	Substitutes for maintenance employees	31-625
Elementary school principals' salaries	31-610	Supervisory principals, salaries	31-610
Estimates of expenditures	31-606	Teachers on probationary tenure	31-618, 31-619
Exemption from double pay ban	31-631	Teaching principals with 4 to 7 rooms,	
Heads of departments, salaries	31-610	salaries	31-610
Instructor in automobile driving at Ab-		Teaching principals with 8 to 15 rooms,	
bott vocational school, appointment and		salaries	36-610
salary	31-624	Temporary teachers, appointment, term,	
Junior high school teachers, appointment		salary	31-604
and promotion	31-620	Trade or vocational schools, salaries	31-612
Junior high school teachers' salaries	31-610	Appointments, assignments, transfer	
Kindergarten, elementary school teachers'			31-615
salaries	31-610	Classification to salary schedule	31-613
Leave of absence	31-607, 31-632—31-637	Principals	31-612
Sabbatical year	31-632—31-637	Teachers	31-612
30-day provision	31-607	Textbooks, free	31-401—31-406
Librarians' salaries	31-610	Title to certain property for McKinley Tech-	
Not to profit from school supplies	31-1104	nical High School	31-1108
Principals of Americanization schools,		Trial of teachers, right to have counsel	31-116
salaries	31-610	Use of school buildings	31-801—31-809
Principals of junior high schools, salaries	31-610	Board of Education may use Franklin	
Principals of senior high, normal schools,		School for office purposes	31-804
salaries	31-610	Certain property set apart for school use	31-808
Principals of vocational schools, salaries	31-610	Civic meetings for free discussion of pub-	
Professor of military science and tactics,		lic questions	31-801
appointment and salary	31-622	Grant by Board of Education	31-801



EDUCATION—Continued		EJECTMENT—Continued	
Use of school buildings—Continued		Failure to pay rents and costs	
Lots conveyed for colored schools, to revert if used for other purposes	31-807	Effect on mortgagee	16-532
Prohibited uses	31-802	Lessee barred	16-532
Recreation centers	31-801	Final judgment, effect	16-518
Restrictions on lot conveyed for public school use	31-805, 31-806	Holding over after expiration of life tenancy	16-531
Social centers	31-801	Injunction dissolved on failure to deposit rents, costs	16-533
Supervision of construction and repairs	31-803	Joint tenants to sue jointly	16-510
Supplementary educational purposes	31-801	Landlord's action in District Court	45-910
Use of former business high school building	31-809	Life tenant found to be living, rights of	16-530
Vacation schools authorized	31-605	Life tenant, rights of protected, re-entry	16-529
Vocational rehabilitation of residents	31-501, 31-507	Mesne profits and damages, claiming by separate counts	16-511
Appropriations	31-506	Mortgagee suing for, release on payment into court	45-605
Cooperation with Federal Board of Vocational Education	31-503	Parties	16-501
Definitions	31-502	Defendants to be lessor, lessee, tenant, or possessor	16-501
Disabled resident of the District of Columbia	31-502	Plaintiffs, joint and several	16-504
Vocational rehabilitation	31-502	Plaintiff to be real claimant	16-501
Expenditures	31-504	Payment, tender of rents, costs, proceedings stopped on	16-534
Federal Board for Vocational Education, authorized and directed to provide	31-501	Plaintiff's title, effect of expiration before trial	16-514
Reports to Congress	31-507	Proof necessary	16-505
Rules and regulations	31-504	Recovery for improvements	16-519
United States Employees' Compensation Commission to cooperate	31-503	Assessment	16-519
United States Public Health Service to cooperate	31-503	Improvements exceeding damages, plaintiff to elect	16-523
Whole school-day sessions required	31-1101	Judgment after refusal of deed tendered	16-525
EDUCATIONAL AND RELIGIOUS INSTITUTIONS		Judgment for damages in excess of improvements	16-521
Abandonment or readjustment of streets to provide grounds	7-113	Judgment where improvements offset damages	16-522
EDUCATIONAL ASSOCIATIONS		Judgment where plaintiff pays for improvements	16-524
See CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS; INSTITUTIONS OF LEARNING		Judgment where plaintiff refuses to pay or tender deed	16-526
Incorporation	29-601—29-606	New trial as to assessment	16-520
EIGHTEENTH PLACE NORTHEAST		Notice	16-519
Closing in part authorized	7-123 note	Recovery of less than is claimed	16-509
EIGHT-HOUR LAW		Relief in equity, effect on lease	16-534
Public buildings and works	22-3407, 22-3408	Separate suit for rent, damages authorized	16-513
Penalty for violation	22-3408	Tenant in common, may sue jointly or severally	16-510
EJECTMENT		Tenant served, notice to landlord, penalty	16-502
Absence of life tenant, remaindermen's remedy	16-528	Title in mortgagee, trustee, effect	16-506
Adverse possession, defense of	16-515	Vendor against vendee entitled to specific performance	16-507
Inclosure	16-515	Verdict and judgment	16-516
Insufficient acts	16-503	For defendant, effect	16-517
Tax payments in lieu of inclosure	16-515	Plaintiff's title proved for whole or part	16-516
Counts	16-504	ELECTRICAL CORPORATION	
Counts for furniture, rent, damages, landlord to separate	16-512	Definition	43-115
Death of life tenant concealed, remaindermen's remedy	16-527	ELECTRICAL ENGINEER	
Declaration, form	16-503	Appointment by Commissioners	1-721
Distinct parcels, defendants occupying severally	16-508	Assistant engineer	1-722
		Duties and qualifications	1-722
		Assistants, appointment, duties	1-721
		Certificate of compliance by, required for certain licenses	47-2302
		Clerical assistance	1-721
		Office established	1-721
		Qualifications	1-721



<b>ELECTRICAL INSPECTOR</b>	Sec.	<b>ELEEMOSYNARY INSTITUTIONS</b>	Sec.
Cutting off current for building or premises, grounds	1-723	See <b>BOARD OF PUBLIC WELFARE; CHARITABLE INSTITUTIONS</b>	
<b>ELECTRICAL WIRING</b>		<b>ELEVATORS</b>	
Assistant inspectors, appointment	1-721	Enclosure of shaft, when required	5-305
Connecting current before inspection and approval prohibited	1-723	Inspection by Assistant Inspector of Buildings	1-729
Criminal offenses	1-720	Passenger elevators, inspection, fees	5-316
Connecting current before wiring inspected or approved	1-723	Penthouses over shaft, height, location, fireproof construction	5-405
Failure to remove or repair wiring after notice, penalty	1-720	Regulations for construction and operation	1-229
Police Court, jurisdiction	1-720	Penalty for violation	1-229
Cutting off current until furnishing authorized by inspector	1-723	Power of Commissioners to adopt	1-229
Electrical engineer chief inspector	1-720	Termination in fireproof compartment, when required	5-305
Fees for examination	1-719	<b>ELEVATOR SHAFT</b>	
Commissioners empowered to fix	1-719	Definition	5-312
Paid to tax collector	1-719	<b>ELEVENTH STREET SOUTHEAST</b>	
Inspection	1-720	Abandonment in part	7-123 note
Buildings in course of construction	1-720	<b>EMBALMING</b>	
Notice of defective or dangerous condition	1-720	See <b>DEAD HUMAN BODIES</b>	
Public service corporation producing and distributing electric current	1-719	Permit required	27-125
Inspector's power to require removal and replacement	1-723	<b>EMBEZZLEMENT</b>	
Notice to remove or repair dangerous wiring	1-720	Administrators	22-1210
Property of electric company, tampering with, penalty	22-3115	Agent of corporation	22-1202
Rules and regulations, Commissioners empowered to adopt	1-719	Punishment	22-1207
		Attorney	22-1202
		Punishment	22-1207
		Auctioneers	22-1208
		Carriers	22-1205
		Punishment	22-1207
		Clerk	22-1202
		Punishment	22-1207
		Commission merchant	22-1206
		Punishment	22-1207
		Consignee	22-1208
		Conversion of provisions	22-1208
		Conviction of, disqualification from holding office	1-316
		Corporate officer	22-1202
		Punishment	22-1207
		Executors	22-1210
		Factor	22-1206
		Punishment	22-1207
		Fiduciaries	22-1210
		Forwarding agent	22-1206
		Punishment	22-1207
		Innkeepers	22-1205
		Punishment	22-1207
		Life insurance agent embezzling premiums	35-429
		Mortgagor of personal property	22-1209
		Notes not delivered	22-1203
		Punishment	22-1207
		Property of District	22-1201
		Property, taking without right	22-1211
		Receiving embezzled property	22-1204
		Punishment	22-1207
		Servant	22-1202
		Punishment	22-1207
		Storage agent	22-1206
		Punishment	22-1207
		Warehouseman	22-1206
		Punishment	22-1207
<b>ELECTRIC LIGHT AND POWER</b>			
See <b>ELECTRICAL WIRING; PUBLIC UTILITIES; STREET LIGHTING</b>			
Excise tax	47-1701		
Lighting of streets	7-701—7-710		
Plant, construction in connection with public building, restriction	9-203		
Property of electric company, tampering with, penalty	22-3115		
Public lamps, overhead wires prohibited	7-702		
Regulations for production and use, commissioners empowered to adopt	1-719		
<b>ELECTRIC PLANT</b>			
See <b>PUBLIC UTILITIES</b>			
Definition	43-114		
<b>ELECTRIFICATION</b>			
Steam-railroad companies	7-1230—7-1234		
Approval of plans and issuance of permit	7-1230		
Cable and drawbridge opening	7-1230		
Commissioners of District, jurisdiction not abridged	7-1233		
Conduit systems, construction, permit	7-1232		
Interstate Commerce Commission, jurisdiction not abridged	7-1233		
Liability for personal injury	7-1234		
Overhead and underground structures and equipment	7-1230		
War Department jurisdiction not abridged	7-1233		
<b>ELECTROCUTION</b>			
See <b>DEATH PENALTY</b>			



**EMERGENCY**

Fire Department, cancelation of leave	4-410
Police and Fire Department leaves, cancelation	4-180
Purchase of supplies or services without advertising for bids	1-808
Retired member of Police or Fire Department, power to require active service	4-514
Special police, appointment, powers, and duties	4-133

**EMERY PLACE**

Closing in part authorized	7-123 note
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**EMINENT DOMAIN**

Alley dwellings, slum-clearance and improvement work	5-103
Damages exceeding benefits, payment	5-104
Law governing proceedings	5-104
Alleys and minor streets	7-301—7-333
Abutting owners	7-302—7-304, 7-306, 7-307
Alleys previously closed unaffected	7-329
Amendment of description of property	7-321
Appeals, proceedings not stayed	7-323
Appeal taken, payment of award	7-323
Assessment of any and all lands benefited	7-319
Assessment of land no part of which taken, procedure	7-221
Benefits assessed to equal damages awarded and costs	7-318, 7-319
Benefits deducted from damages in making payments	7-320
Benefits to equal damages in amount	7-318, 7-319, 7-324
Commissioners authorized to institute proceedings	7-313
Confirmation of verdict by court, effect	7-320
Cost of making plats, payment	7-326
Costs and expenses, assessment as damages	7-318
Costs, assessment, new jury summoned	7-317
Counsel to institute proceedings, right to employ	7-333
Court's power to set aside or vacate verdict	7-317
Damages exceeding benefits, excess paid out of appropriation	7-324
Dismissal of action, damages exceeding benefits	7-324
Failure of proceedings, payment of costs and expenses	7-331
Fee of jurors	7-318, 7-322
Hearing of evidence	7-315
Jurors	7-315
Lands of United States, sale, proceeds paid into treasury	7-325, 7-330
Lien of assessments	7-321
Marshal's fee	7-318
New jury, verdict set aside or vacated	7-317
Notice of proceedings	7-314
Number of jurors	7-315
Oath of jurors	7-315
Objections to jurors	7-315
Objections to verdict or award	7-317
Opening, widening, or straightening	7-313—7-333
Partial setting aside of verdict	7-317

**EMINENT DOMAIN—Continued**

Alleys and minor streets—Continued	
Part only of parcel condemned, assessment of benefits	7-316
Payment of assessments in instalments	7-321
Payment of awards to owners	7-320
Petition, contents	7-313
Plat filed with petition	7-313
Plats made by surveyor	7-326
Proper notice not given one owner, condemnation of land	7-327
Qualifications of jurors	7-315
Service of notice on owners	7-314
Summoning of jurors	7-315
Time limit for objections to verdict and award	7-317
Validity of proceedings as to persons unaffected by error	7-327
Verdict of jury, contents	7-315
Verdict of second jury final	7-317
Viewing of premises by jury	7-315
Assessment of land no part of which taken	7-221
Notice of assessment of benefits, method of giving	7-221
Objections and exceptions to assessment	7-221
Option of Commissioners preserved	7-221
Owner not served with notice of proceedings	7-221
Publication of assessment roll	7-221
Building lines, establishment	5-201—5-203, 7-319
Assessment of any and all lands benefited	7-319
Assessment proceedings and assessment area	5-203
Law governing proceedings	5-203
Petition, filing, contents	5-202
Plat	5-202
Street less than 90 feet wide, and more than block long	5-201
United States District Court, jurisdiction	5-202
Closing and readjusting streets and highways, objections filed	7-405—7-407
Abandonment of proceedings after verdict returned	7-407
Collection of benefit assessments	7-406
Commissioners authorized to institute proceedings	7-405
Effective date of closing and abandonment	7-405
Law governing proceedings	7-405
Payment of damage awards	7-406
Garbage reduction plants, acquisition of sites	6-505
Jurisdiction of proceedings	11-324
Land for District uses	16-601
Abandonment of proceedings, liability	16-610
Appraisement	16-606
Citation to owners in condemnation	16-604
Condemnation authorized	16-601
Contents of petition	16-602
Declaration of taking, contents	16-605
Deposit of estimated compensation	16-605
Drawings of condemnation jury	16-603
Objections, exceptions to appraisement	16-607
Objections to jurors	16-606
Payment of award	16-608
Petition for condemnation	16-601



EMINENT DOMAIN—Continued	Sec.	EMINENT DOMAIN—Continued	Sec.
Land for District uses—Continued		Pending proceedings by United States not affected	16-611
Selection of condemnation jury	16-604	Permanent Highway Plan adopted, abandoning highways	7-114
Surrender of possession on filing of declaration	16-605	Maintenance pending actual abandonment and assessment of damages	7-114
Title vests in District on filing declaration, making deposit	16-605	Use of property pending condemnation	7-114
Land for United States uses	16-619	Philadelphia, Baltimore, and Washington Railroad Company	7-1221
Amendment of proceedings	16-641	Street extensions	7-218
Appeal, deficiency judgment	16-638	Cost and expenses assessed as benefits	7-218
Appearance after default	16-626	United States not liable for cost of acquiring land	7-218
Citation and notice of condemnation	16-621	Streets and other ways	7-201—7-221
Citation of condemnation	16-622	Amendment, petition, process, verdict, or record, power of court	7-212
Contents	16-622	Appeal by aggrieved party	7-214
Publication	16-623	Appointment of jury from names drawn	7-205
Service	16-624	Appropriation for payment of costs and damages authorized	7-220
Condemnation authorized	16-619	Assessment of all or part of damages, assessment as benefits	7-219
Declaration of taking, contents, effects	16-628	Assessment of benefits to reimburse District	7-201
Default in appearance, consent presumed	16-625	Assessment of land no part of which condemned, procedure	7-221
Delivery of possession	16-640	Benefits collected paid into Federal Treasury for credit of District	7-220
General authority of court	16-642	Commissioners authorized to institute action	7-202
Guardians ad litem	16-627	Compensation of jurors	7-213
Judgment, provisions	16-636	Condemnation through unsubdivided part of plot	7-216, 7-217
Judgment, when final	16-635	Confirmation of verdict by court, effect	7-210
Jury to view lands, presence of parties	16-631	Costs and expenses assessed as benefits	7-201, 7-208
Measure of damages	16-632	Costs and expenses paid by District	7-201
Motion for new trial, time for making	16-635	Damages assessed as benefits	7-208
New trial procedure	16-634	Damages awarded paid by District	7-201
Oath of juror	16-630	Damages in respect to land condemned assessed as benefits	7-201
Payment of judgment	16-637	Deposit of award in court registry, grounds	7-215
Pending proceedings, savings clause	16-643	Description of property, power to amend	7-212
Petition for condemnation, contents	16-620	Dismissal of proceedings by Commissioners, damages exceeding benefits	7-219
Procedure for condemnation	16-620	Drawing of special jury	7-205
Proceedings by District not affected	16-644	Excess damages and costs borne by District	7-208
Selection and qualifications of jury	16-629	Excess of damages over benefits paid out of appropriation	7-220
Setting aside verdict	16-634	Execution of plan for permanent system of highways	7-201
Trial	16-632	Guardian ad litem for persons under disability	7-204
Trial date	16-629	Hearing of evidence by jury	7-206
Verdict	16-633	Instalment payment of assessments	7-211
Vesting of title on payment into court	16-639	Interest on deferred payments of assessments	7-211
Land in excess of needs	16-612	Land subject to assessment	7-208
Agencies of United States may acquire	16-612	Lien of assessments	7-211
Appropriations made available	16-614	Matters considered in assessing benefits	7-208
Commissioners of District may acquire	16-612	New jury, verdict vacated	7-209
Condemnation by agencies of United States	16-616	Oath of jurors	7-205
Condemnation by Commissioners	16-615		
May be sold	16-613		
Retention for public use	16-613		
Sale	16-613		
Appraised value as price	16-613		
Notice to abutting owners	16-613		
Proceeds to be deposited in Treasury	16-613		
Savings clause	16-618		
Laws pertaining to acquiring streets, alleys not affected	16-617		
Materials for making or repairing highways	7-332		
Parks	7-218		
Amount of cost and expenses assessed as benefits	7-218		
Parks and playgrounds, acquisition of land	8-102, 8-103		
Parkways	7-218		
Amount of cost assessed as benefits	7-218		



EMINENT DOMAIN—Continued		Sec.	EMPLOYMENT AGENCIES—Continued		Sec.
Streets and other ways—Continued			Applications by minors not to be accepted		47-2106
Objections and exceptions to verdict		7-209	Bond of licensed agency		47-2102
Objections to jurors		7-206	Actions on bonds		47-2102
Opening, extending, or widening streets and highways		7-201	Amount of bond		47-2102
Partial vacation of verdict, effect		7-209	Conditions		47-2102
Parties not appealing, payment of award		7-214	Copy of bond, fee		47-2102
Part of lands not condemned, assessment of benefits		7-207	Sureties		47-2102
Part only of plot taken, assessment of benefits		7-207	Checking of references, exception		47-2103
Payment of awards	7-210, 7-214		Exceptions from license requirements		47-2109
Petition, contents		7-203	Agencies conducted by incorporated alumni associations of registered nurses		47-2109
Proceeding in rem		7-202	Agencies conducted by incorporated hospitals		47-2109
Proceedings not stayed by appeal		7-214	Agencies conducted by registered medical institutions		47-2109
Publication of notice		7-204	Free employment agencies		47-2109
Service of process on owners		7-204	False advertisements prohibited		47-2108
Set-off of benefits against damages		7-211	False information prohibited		47-2108
Time allowed for excepting to verdict		7-209	False promises prohibited		47-2108
Title to property in dispute or uncertain, deposit of award in court		7-215	Inducing domestic employees to leave employment		47-2110
Transfer of title		7-215	Licenses		47-2101—47-2111
United States District Court given jurisdiction		7-202	Denial, suspension and revocation		47-2101
Vacancy in jury, power to fill		7-206	Authority of Commissioners of the District		47-2101
Vacation of verdict, power of court		7-209	Writ of error to Court of Appeals		47-2101
Verdict of jury, preparation, contents		7-206	Fee		47-2101
Viewing of premises by jury		7-206	Minors not to be placed in violation of compulsory education or child labor laws		47-2106
Streets through unsubdivided part of plot		7-216, 7-217	Not to procure help for places where intoxicants are sold, penalty		47-2111
Appropriation for payment of cost, expenses and damages		7-217	Not to send applicants except to employers applying for help, penalty		47-2111
Assessment of benefits and damages		7-217	Not to send females to places of bad repute, penalty		47-2111
Commissioners authorized to institute proceedings		7-216	"Nurses' registry" defined		47-2101
Failure or refusal to dedicate streets or highways		7-216	Persons of bad character not to be permitted to frequent, penalty		47-2111
Law governing procedure		7-217	Private agencies, operating without license unlawful		47-2102
Reservation of part of land from subdivision		7-216	"Private employment agency" defined		47-2101
Time for return of verdict		16-609	Receipts to applicants for employment		47-2103
United States District Court		11-301	Records to be open for official inspection		47-2107
Assignment of judge to hear cases		11-301	Register of applicants for employment required		47-2103
Viaducts and underpasses, construction		7-1215	Register of applicants for help required		47-2103
EMPLOYEE BENEFIT ASSOCIATIONS			Restrictions on locations		47-2105
Exemption from insurance company taxes		47-1808	Statement to contract laborers sent outside city		47-2110
EMPLOYEES' BENEFICIARY ASSOCIATIONS			"Theatrical employment agency" defined		47-2101
Income tax, when exempted		47-1502	EMPLOYMENT OF WOMEN		
EMPLOYEES' COMPENSATION ACT			See WOMEN		
District employees		1-311	ENCROACHMENTS		
Awards, payment		1-311	Improper occupation of streets, squares, or reservations belonging to United States		7-1209
Federal law made applicable		1-311	ENCUMBRANCES		
EMPLOYERS' LIABILITY ACT			Preference not affected by assignments for benefit of creditors		28-2606
See COMMON CARRIERS			ENDORSEMENT		
EMPLOYMENT AGENCIES			See INDORSEMENTS		
Advertisements, letterheads, receipts, and blanks to bear name and address		47-2111			
Annual license fee		47-2101			
"Applicant for employment" defined		47-2101			
"Applicant for help" defined		47-2101			



**ENGINEER COMMISSIONER**

	Sec.
Absence, performance of duties by assistant officer	1-211
Assistant	1-212
Detailed from Engineer Corps of Army	1-212
Duties	1-212
Junior to engineer officer	1-212
Member of Board for Condemnation of Insanitary Buildings	5-601
Number	1-212
Compensation	1-204
Detailed to commission by President	1-203
Member National Capitol Park and Planning Commission	8-101
Not considered as holding civil office	1-205
Not required to perform other duties	1-203
Officer in Engineer Corps of United States Army	1-201
Qualifications	1-202
Rank in Army	1-202

**ENGINEERS**

See STEAM AND OTHER OPERATING ENGINEERS	
Alley-dwelling and slum-clearance projects	5-105
Plans and specifications for buildings and works, right to make, signing required	2-1017

**ENGINES**

Ashes and cinders, removal	6-801
Noisome odors prohibited	6-801
Smoke Prevention Law	6-801—6-804
Testing of boilers	2-1502

**ENGLISH LANGUAGE**

Penalty for failure to use in pleadings	13-202
Required in pleadings, exceptions	13-201

**ENTERTAINMENT**

Buildings for, licenses	47-2320
-------------------------	---------

**ENTRY**

See FORCIBLE ENTRY AND DETAINER	
Unlawful entry on private property, penalty	22-3102

**E. O.**

Gaming, keeping game or device or inducing play, penalty	22-1504
--	---------

**EQUALITY**

Gaming, keeping game or device or inducing play, penalty	22-1504
--	---------

**EQUIPMENT**

Trading in for new articles	1-819
-----------------------------	-------

**EQUITY**

See ABATEMENT AND REVIVOR	
Abatement	12-108
Bill in equity not excluded in attachment and garnishment	16-332
Depositions as testimony	14-103
Jurisdiction, United States District Court	11-306
Pleading equitable defenses at law	13-214
Powers of Probate Court, relation	11-504
Principles, effect of Code	49-301
Reference of questions of law and fact	16-1701—16-1719
Revivor	12-108
Testimony	14-103

**EQUITY COURT TERM**

	Sec.
See UNITED STATES DISTRICT COURT	
Attachment of persons to enforce decrees	11-326
Bonds and undertakings	28-2403
Commitment for contempt to enforce decree	11-326
Crier for, appointment	11-312
Delivery of chattels, order for, enforcement	11-328
Enforcement of decrees	11-326
Fieri facias, issuance to enforce decree	11-326
Interlocutory decree, enforcement	11-327
Jurisdiction	11-325
Mandatory injunction to enforce decree	11-326
Messenger for, appointment	11-312
Money judgment, imprisonment of defendant to enforce payment restricted	11-326
Rules in practice and procedure	11-325
Sequestration of property to enforce decree	11-326
Special term of District Court	11-311

**ERGOT**

Poison, sale, restrictions	2-612
----------------------------	-------

**ESCAPE**

See CRIMINAL PROCEDURE	
Breaking prison or aiding therein, penalty	22-2601
Boys Training School, enticing away from or harboring escapes, penalty	32-818
Girls Training School, enticing away from or harboring escapes, penalty	32-318, 32-907
Police and private detectives aiding criminals to escape justice, prosecution	4-175

**ESCHEAT**

See DECEDENTS' ESTATES	
Intestate's surplus estate	18-717

**ESTATES**

See ABSENTEES' AND ABSCONDERS' ESTATES; DECEDENTS' ESTATES	
Absconders' and absentees' estates	20-701
Assessment on basis of return	47-1614
By sufferance, effect of statute of frauds	2-301
By the curtesy	18-215
Chattels real	45-804
Conditions precedent	45-804
Conditions subsequent	45-804
Contingent, conveyable by deed or will	45-101
Contingent interests, sale	45-1101—45-1103
Coparceny estates abolished	45-817
Creation by deeds, effect of statute of frauds	12-301
Creation by parole, effect of statute of frauds	12-301
Entailed estates abolished	45-802
Enumeration of estates in land	45-801—45-822
Estates classified	45-806
Estates of inheritance, conveyance by deed or will required	45-106
Estates tail abolished	45-802
Expectant	45-808
Alienable	45-815
Descendible	45-815
Devisable	45-815
Disseizin, destruction by, does not defeat	45-814
Forfeiture, destruction by, does not defeat	45-814
Future estates	45-808
Intermediate owner's alienation does not defeat	45-814
Merger, destruction by, does not defeat	45-814



ESTATES—Continued		Sec.	ESTATES—Continued		Sec.
Expectant—Continued			Quarter to quarter		45-821
Not void in creation by liability to defeat	45-814		Notice to quit		45-902
Preceding owner's alienation does not defeat	45-814		Termination		45-902
Reversion	45-808		"Reversion" defined		45-809
Surrender, destruction by, does not defeat	45-814		Sale of all the interests in an estate	45-1101—45-1104	
Fee simple	45-802, 45-803		Sale of limited estates and interests therein	45-1101—45-1104	
Absolute	45-803		Sufferance		45-801
By husband and wife, form	45-301		As chattel interests		45-804
Created unless contrary intention appears	45-201		Description		45-820
Form of deed	45-301		Notice to quit		45-904
Qualified	45-803		Not liable to sale under execution as chattel interests		45-804
Words of inheritance unnecessary to create	45-201		Termination		45-904
For term of years, conveyance by deed, lease, or will required	45-106		Tenancy by entireties	45-816 note	
For the life of a third person	45-805		Tenancy in common		45-816
Freehold, alienation	45-104		Vested, conveyable by deed or will		45-101
Freeholds	45-804		Will, estates at		45-801
Future	45-810		As chattel interests		45-804
Alienation, rule against perpetuities	45-102		Creation		45-822
Alternative	45-813		Description		45-822
Conditional limitations	45-811		Notice to quit		45-903
Contingent	45-812		Not liable to sale under execution as chattel interests		45-804
Conveyable by deed or will	45-101		Tenant after sale under mortgage, trust deed or execution, without lease		45-322
Definition	45-810		Termination	45-822, 45-903	
Dependent on person's death without heirs, issue, or children, defeated by birth of his posthumous children	45-204		Yearly		45-801
Limited to heirs, issue, or children, posthumous children take as though living at ancestor's death	45-204		Chattels real		45-804
Remainder	45-811		Years, estate for, description		45-818
Vested	45-812		Year to year, estates from, good for one year only		45-819
Good as executory devises, conveyable by deed	45-101		ESTATE TAX		
Included in definition of "individual" under income tax law	47-1543		See INHERITANCE TAXES; TAXATION AND FISCAL AFFAIRS		
Inheritable	45-801		Abatement of assessment		47-1614
Fee simple estates	45-802		Additional assessment		47-1614
Freehold	45-804		Additional levy on transfers		47-1608
Joint tenancy	45-816		Administration		47-1618
Life	45-801		Assessment on basis of return		47-1614
Conveyable by deed or will	45-106		Assessor		
Conveyance required to be signed and sealed	45-106		Definition		47-1628
Creation in term for years	45-104		Determining tax when return not filed		47-1626
Form of deed	45-301		To determine tax		47-1618
Freehold	45-804		Arrears		47-1619
Warranty by life tenant void as to heir	45-309		Benefits to District		47-1611
Minors	21-101		Bureau of Internal Revenue to supply information		47-1625
Month to month	45-821		Collected like personal property taxes		47-1619
Notice to quit	45-902		"Collector of taxes" defined		47-1628
Termination	45-902		"Commissioners" defined		47-1628
Possession, estates in	45-807		Commissioners of the District to supervise enforcement		47-1618
Present, conveyable by deed or will	45-101		Compelling attendance of witnesses		47-1618
Pur autre vie	45-805		Compounding and settling, assessor's authority		47-1627
Chattel real after death of grantee or devisee	45-805		Copies of federal communications on estate tax to be filed with assessor		47-1613
Freeholds during life of grantee or devisee	45-805		Copy of federal estate tax return to be filed with assessor		47-1613
			Credits against tax		47-1609
			Estate tax imposed by state or territory		47-1609
			Inheritance tax imposed by state or territory		47-1609



ESTATE TAX—Continued		Sec.	EVIDENCE—Continued		Sec.
Credits against tax—Continued			Certified copy of notary's record		
Legacy tax imposed by state or territory	47-1609		Contents of capital stock book of domestic life insurance companies		1-513
Succession tax imposed by state or territory	47-1609		Coroner's inquests		35-515
Definitions	47-1628		Corporation stock-book entries, presumptions		11-1205
"District" defined	47-1628		Depositions		29-226
Enforcement by mandamus	47-1620		Documentary		14-201—14-204
Examining books and witnesses	47-1618		Effect in District		14-404
Extinguishment and reattachment of lien on personal property	47-1603		Prima facie evidence, limitation		14-402
Failure to file return, liability	47-1621		Foreign deeds, nontestamentary		14-402
False or fraudulent return, liability	47-1621		Certificate of keeper		14-402
Federal Bureau of Internal Revenue to supply data	47-1625		Prima facie evidence, limitation		14-402
Imposition of tax	47-1608		Foreign probated wills		14-402
"Include" defined	47-1628		Certificate of keeper		14-402
Interest added when not paid on time	47-1619		Municipal ordinances and regulations		14-406
Is additional to inheritance tax	47-1608		Method of proof		14-406
Liability of bond for assessments	47-1616		Prima facie evidence, limitation		14-406
Liability of personal representative's bond, limitation	47-1616		Production of books and papers, at law		14-405
Maximum tax	47-1610		Records in states		14-401
"Metropolitan police department" defined	47-1628		Certificate of keeper		14-401
Monthly report of register of wills to assessor	47-1617		Prima facie evidence, limitation		14-401
Payment	47-1615		Seal of court or recording office		14-401
Payable to collector of taxes	47-1615		Wills recorded with register of deeds		14-403
Time for payment	47-1615		Admitted to probate in District		14-403
Purpose is to secure benefits to District under federal estate tax	47-1611		Foreign wills, by transcript		14-403
Rate is 80 per cent of federal estate tax	47-1608		Prima facie evidence, limitation		14-403
Release of lien	47-1623		Effect of bulk sales law		28-1705
"Residence" defined	47-1628		Impeachment of own witness		14-104
"Resident" defined	47-1628		Insufficient, as basis for new trial		13-221
Return not filed, assessor determining tax	47-1626		Judgment admitting will to probate, admissibility		11-519
Rules and regulations	47-1618		Oath or affirmation required		14-101
Situs of intangibles	47-1629		Optometry board records, certified copies		2-508
Tax is lien for 10 years	47-1603		Optometry, license to practice, certified copy		2-513
Tax on transfers on nonresident decedent's property in District	47-1612		Party-wall, certificate of location		1-628
Transfer of assets	47-1624		"Perjury" defined		14-102
Transfer of nonresidents' realty and personalty	47-1612		Property in possession of property clerk		4-166
Transfers except to decedent's fiduciary	47-1624		Protest of bill or notes by notary		1-513
Liability of transferor not reporting	47-1624		Seal of Commission on Licensure to Practice the Healing Arts, judicial notice of		2-103
Transferor's duty to make prior report	47-1624		Surveyor's records, transcript		1-611
Wilful failure to make return, penalty	47-1622		Testimony in equity causes		14-103
Wilful failure to pay tax, penalty	47-1622		Depositions		14-103
Wilful failure to supply data, penalty	47-1622		Oral before court, commissions, or examiners		14-103
			Rules of Supreme Court of the United States and District Court		14-103
			Transcript of testimony before public utilities commission		43-422
			Witnesses		14-301—14-309
ESTOPPEL			EXAMINATIONS		
Forged signature to negotiable instrument	28-124		See DENTISTRY; HEALING ARTS PRACTICE ACT; OPTOMETRY		
ETHYL ALCOHOL			EXCAVATIONS		
Definition of "alcohol" includes	25-103		Abatement as nuisance		5-504
EVIDENCE			Making in streets and other public ways, permits		1-726
Admissibility elsewhere of Juvenile Court testimony	11-915		Unsafe conditions		5-501
Board of Cosmetology books and records	2-1302		Inspection by building inspector		5-501
Board of Dental Examiners, certified copies of record	2-303		Notice given owner by building inspector		5-501
Board of Podiatry Examiners, certified copies of record	2-702		Remedy of condition by owner, time limit		5-501
Certificates of incorporation, trust, title and indemnity firms	26-332		Report		5-501



**EXCEPTIONS**See **BILLS OF EXCEPTION**

As basis for new trial	13-221
Exceptions to auditor's report in actions on account	16-102—16-105
Probate Court	11-519
Trial by court of civil cases, District Court	11-318

**EXCHANGE**

Note providing for payment, negotiability	28-103
Trading in old equipment on purchasing new articles	1-819

**EXECUTION OF PRISONERS**See **DEATH PENALTY**

Executioners, appointment by Commissioners of District	23-702
--	--------

**EXECUTIONS**See **EXEMPTIONS**

Alias writs	15-202
After fiat rendered	15-204
Return	15-203
Returns nunc pro tunc	15-203
Appraisal of levied property	15-214
Death of marshal after receipt of writs	15-215
Defective sales, effect	15-216
Equitable interests in chattels pledged	15-212
Exemption, notaries public, seal and official document	1-507
Fiat instead of execution	15-205
Goods in warehouse	
Right to levy on	28-1919
Negotiable receipt outstanding	28-1919
Transferred nonnegotiable receipts outstanding	28-2006
Issuance	15-201
Three years from expiration of suspension	15-201
Three years from judgment	15-201
Judgments of Municipal Court	15-209
Lien on personal property	15-209
Not lien on real property	15-209
Lien	15-206
Equitable interests in goods and chattels	15-206
Goods and chattels	15-206
Marshal, remedy in sale of wrong property	15-217
Money decrees in equity, same as judgments	15-218
Municipal Court	11-724
Notice of sales by advertisement	15-214
Proceedings supplementary	15-301
Attachment and garnishment	15-301
Answers to interrogatories	15-304
Condemnation of property	15-311
Costs	15-301
Interrogatories to garnishee	15-304
Judgment against garnishee	15-312
Levy	15-305
Liability of garnishee	15-305
Oral examination of garnishee	15-304
Pleading to attachment	15-308
Preservation of property	15-307
Property in hands of executor, administrator	15-306
Property in hands of marshal or coroner	15-306
Property to be subjected	15-303

**EXECUTIONS—Continued**

Proceedings supplementary—Continued

Attachment and garnishment—Continued	
Sale of perishable property	15-307
Sale of property	15-311
Time of issuance	15-301
Traversing garnishee's answers	15-309
Trial of right to attached property	15-310
Limitations on issuance	15-302
Real property	15-313
Order to show cause why possession is retained	15-313
Possessor showing superior title, effect	15-313
Refusal to deliver possession	15-313
Property on which fieri facias may be levied	15-210
Evidences of debt to be sold	15-211
Money not to be placed on sale	15-211
Return, period	15-201
Sale of levied property	15-214
Stay of execution, Small Claims and Conciliation Branch, Municipal Court	11-871
To be satisfied from personalty if possible	15-213
Writs	15-207
Death of debtor after delivery to marshal	15-208
Marshal or coroner indorsing date	15-207

**EXECUTIVE DEPARTMENT**

Commissioners of District	1-218
---------------------------	-------

**EXECUTORS AND ADMINISTRATORS**See **DECEDENTS' ESTATES; WILLS**

Accounting by representative of deceased	20-110
Accounts	20-601
Assets to be charged	20-604
Bequests to executors	20-606
Deceased executrix or administratrix	20-608
Disbursements and allowances	20-605
Executors and administrators of deceased, commission	20-610
Failure to return	20-603
First account	20-601
Lost property	20-609
Return by executor, administrator of deceased	20-607
Subsequent accounts	20-602
Action against for accounting	16-101
Additional bond	20-108
Delivery of assets on failure to provide	20-108
Failure to provide	20-108
Administrators	
Bond	20-202
Bonds and undertakings, in District Court	28-2403
Construction of "administrator"	49-205
Declining administration	20-218
Granting of letters	20-201
Letters of administration, form	20-219
Notice of application for letters	20-217
Persons entitled to administer	20-204
Brothers and sisters	20-207
Children	20-204
Creditors	20-216
Descending relations preferred to collateral	20-211



## EXECUTORS AND ADMINISTRATORS— Sec.

## EXECUTORS AND ADMINISTRATORS— Sec.

## Continued

## Continued

## Administrators—Continued

## Executors—Continued

Persons entitled to administer—Continued	
Father	20-206
Feme sole preferred to married woman	20-213
Grandchild	20-205
Incompetents to be excluded	20-215
Limit to preference in lineal relatives	20-212
Males preferred	20-209
Mother	20-206
Next of kin	20-208
Relations of whole blood preferred	20-210
Relations on part of father preferred	20-214
Surviving spouse	20-204
Special bond	20-203
Application for letters	20-104
Bond	20-104
Content	20-104
Bonds	20-117
Actions on bonds	20-117
Liable for estate tax	47-1616
Liable for inheritance tax	47-1616
Limitation of actions	12-201
Recording	20-117
Bonds and undertakings, in District Court	28-2403
Bulk sales law, exemption	28-1704
Claims against, as assets of estate	18-303
Collectors	20-401
Bond, form	20-402
Bonds and undertakings, in District Court	28-2403
Cessation of powers	20-404
Commission	20-403
Duties	20-403
Failure to deliver over	20-405
Letters ad colligendum	20-401
Form	20-401
Grant	20-401
Liability	20-403
Oath, form	20-402
Competency, determination	20-101
Continuing decedents' business	20-116
Corporate stock, voting	29-221
Default in performance of duties, power of court to compel performance	11-508
Discretion in pleading limitation to creditors' claims	18-515
Executor de son tort	20-113
Executors	20-301
Absent from probate hearing, summons, notice	20-306
Acting without letters	20-310
Bond	20-301
For debts only, waste	20-302
For joint executors	20-304
Special	20-303
Bonds and undertakings, in District Court	28-2403
Construction of "executor"	49-205
Deed, form	45-301
Disqualified	20-309

Failure to serve, issuance of letters of administration	20-305
Letters testamentary	20-301
Form	20-311
Oath, except corporations	20-301
Renunciation	20-308
Several, summons to all	20-307
Failure to account, revocation of letters	11-515
Failure to invest funds, revocation of letters	11-513
Fiduciaries under income tax law	47-1543
Fiduciary residing outside District	20-118
Failure to give power of attorney	20-118
Power of attorney to register of wills	20-118
For assignees for benefit of creditors	28-2604
Foreign, suits by	20-505
For trustees for benefit of creditors	28-2604
Fraudulent conveyances, suits to vacate	12-403
Grant of letters ad colligendum, by Probate Court	11-504
Grant of letters of administration by Probate Court	11-504
Grant of letters testamentary by Probate Court	11-504
Inheritance and estate taxes, duties	47-1601—47-1629
Investment of funds	20-115
Letters de bonis non, form, duties	20-105
Letters revoked	20-106
Levy on money in attachment and garnishment	16-313
Liability for waste of executor de son tort	20-114
Liability of executors or administrators of deceased	20-112
Order against representative of deceased	20-111
Personally exempt from stockholder's liability	29-220
Persons between 18 and 21	20-102
Persons preferred for administrator with will annexed	20-103
Probate court summoning to appear	11-506—11-508
Failure to appear, attached and sequestration of property	11-508
Fine for failure to obey summons	11-506, 11-507
Removal of co-fiduciaries	20-107
Resignations	20-119
Sale of real estate, additional bond	20-104
Set-off	16-1908
Suits	
Against, because of concealment	20-504
Against concealers of assets	20-503
Judgments against	20-502
Amount of damages	20-502
Fine for assessment of damages	20-502
On bonds against heirs	20-506
Power to sue and defend	20-501
Surety applying for counter security	20-109

## EXEMPTIONS

See TAXATION AND FISCAL AFFAIRS	
Alley Dwelling Authority property	5-114
Boiler Inspection Act	1-705, 1-709
Dentistry, law regulating practice	2-317
Earnings of family providers	15-403



<b>EXEMPTIONS—Continued</b>		Sec.	<b>FAIRS</b>	Sec.
Encumbrances on exempt property, validity	15-402		Fair building license	47-2320
Jury service	11-1420		Outdoor, license	47-2326
Notary's public seal and official document from execution	1-507		<b>FALSE CERTIFICATION</b>	
Property of householder	15-401		Recordable instruments, penalty	22-1308
Attachment	15-401		<b>FALSE FIRE ALARMS</b>	
Debts due for wages, exception	15-401		Penalty	22-1119
Decrees	15-401		<b>FALSE PERSONATION</b>	
Distrain	15-401		Applicant for license to practice healing arts	2-124
Enumeration	15-401		Clergyman, penalty	22-1304
Levy	15-401		Courts, penalty	22-1303
Sale on executions	15-401		District inspector, penalty	22-1305
Taxation, from	47-801—47-830, 47-1208		Licensees under Healing Arts Practice Act	2-125
<b>EXHIBITIONS</b>			Narcotic drugs, obtaining by	33-420
Buildings for, license	47-2320		Notary, penalty	22-1303
<b>EXPLOSIVES</b>			Officers, penalty	22-1303
Power to prohibit use in District	1-224		Police officer, penalty	22-1306
Sale location license	47-2314		Public officer, penalty	22-1304
Approval of fire marshal	47-2314		Wearing insignia of certain organizations, penalty	22-1307
Fee	47-2314		<b>FALSE PRETENSES</b>	
Setting off on Capitol grounds, prohibited	9-110		Penalty	22-1301
Storage license	47-2314		<b>FALSE REPRESENTATION</b>	
Approval of fire marshal	47-2314		Alcoholic beverages, by minor of age to obtain, penalty	25-130
Fee	47-2314		<b>FAMILY DWELLINGS</b>	
Use within District, power to regulate	1-227		See <b>TAXATION AND FISCAL AFFAIRS</b>	
<b>EXPRESS COMPANIES</b>			Taxation	47-901—47-905
See <b>COMMON CARRIERS; PUBLIC UTILITIES</b>			<b>FARMERS' COOPERATIVE ASSOCIATIONS</b>	
<b>EXPULSION</b>			Income tax, when exempted	47-1502
See <b>ATTORNEYS</b>			<b>FARMERS' PRODUCE MARKET</b>	
<b>EXTORTION</b>			Charges for use of space	10-136, 10-137
See <b>BLACKMAIL</b>			Collection of rentals	10-136
Recording deed, contract, or conveyance with intent to	22-1302		Control and regulation by Commissioners of District	10-137
<b>EXTRADITION</b>			Location	10-136, 10-137
See <b>CRIMINAL PROCEDURE</b>			Preservation for use by farmer	10-137, note
Admittance to bail of fugitive	23-404		<b>FARO BANK</b>	
Apprehension of accused	23-401		Gaming, penalty	22-1504
Bond for appearance before proper official	23-409		<b>FARRAGUT SQUARE</b>	
Commitment	23-405		Street fronting, railroads prohibited	7-1202
Complaint for apprehension of fugitive	23-403		<b>FEDERAL AID</b>	
Discharge when not demanded by return day	23-406		Alley-dwellings, slum-clearance, housing proj- ects	5-114
Examination in Police Court	23-404		<b>FEDERAL BOARD FOR VOCATIONAL EDUCA- TION</b>	
Forfeiture of bond	23-405		Rehabilitation of residents of District	31-501
Fugitives from federal districts	23-410		<b>FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS</b>	
Fugitives from foreign countries	23-410		Loans to District for public building	9-206
Fugitives from other states or territories	23-401		<b>FEDERAL HOME LOAN BANK</b>	
Associate justices of District Court, duties	23-402		See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS; BUILDING ASSOCIATIONS; CREDIT UNIONS; PETTY LOANS</b>	
Chief Justice of District Court, duties	23-401		<b>FEEBLE-MINDED PERSONS</b>	
Notice of apprehension to be forwarded	23-407		See <b>CHILDREN; DISTRICT TRAINING SCHOOL; INSANE PERSONS</b>	
Period of detention	23-408			
Voluntary return	23-409			
Warrants for apprehension, issuing from Police Court	23-403			
<b>EYES</b>				
See <b>OPTOMETRY</b>				
<b>FAIRLAWN AVENUE</b>				
Railroad Avenue, name changed in part 7-107, note				



FEES AND COSTS		Sec.	FEES AND COSTS—Continued		Sec.
See CRIMINAL PROCEDURE; LICENSES			District Court—Continued		
Architect's Registration Law	2-1023		Witnesses		11-1512
Attachment and garnishment	16-317		Detained, excepted		11-1512
Attorneys	11-1501		Government employees excepted		11-1512
Agreements with clients not prohibited	11-1501		Mileage		11-1514
Docket fees	11-1502		Per diem		11-1514
Admiralty, final hearing	11-1502		Subsistence		11-1514
Cause discontinued	11-1502		Exceptions		11-1507
Depositions	11-1502		District of Columbia		11-1507
Equity, final hearing	11-1502		United States		11-1507
Jury trials	11-1502		Gas connection		1-726
Recognizances	11-1502		Healing arts, license fees		2-119
Removals to Court of Appeals	11-1502		Health officer for copies of records		6-103
Trial by court	11-1502		Inquests		
Taxed as costs, when	11-1501		Jurors		11-1515
Attorneys for District of Columbia, excepted	11-1516		Witnesses		11-1515
Barber's Registration Law	2-1111		Jurors		
Bathing pools and beaches, use	8-170		Alleys or minor streets, eminent domain		
Board of Zoning Adjustment, appeals to	5-420		proceedings		7-318, 7-322
Boiler inspection	1-710		Eminent domain proceedings, land for		
Commissioners empowered to fix	1-715		streets		7-213
Effective date of schedule	1-718		Insanitary building condemnation pro-		
Boxing exhibition licenses and permits	2-1206		ceedings		5-614
Building permits, certificates, and transcripts			Licenses to practice healing arts, refund		2-119
of records	5-429		Life insurance act		35-402
Buildings, inspection, fire escapes required	5-316		Mandamus proceedings		16-1006
Business license fees	47-2301-47-2350		Marshal		7-318, 11-1102, 11-1510
Certificates of taxes and assessments due	47-306		Alleys or minor streets, condemnation		
Clerk of Court of Appeals	11-204		proceedings		7-318
Accounting and deposit	11-204		Municipal Court		11-710
Corporation income tax returns	47-1516		Nonresident plaintiff		11-719
Cosmetologist Licensing and Registration Law	2-1319		Paupers		11-720
Defendants	11-1517		Power to establish		11-722
Plaintiff nonsuited	11-1517		Small claims and conciliation branch		11-804
Verdict for	11-1517		Municipal fish wharf and market		10-135
Exception	11-1518		Notaries public		1-514, 1-515
Dental Regulatory and Licensing Law	2-313, 2-314		Nurses Registration Law		2-404, 2-406
Dental hygienists	2-326, 2-327		Annual registration fee		2-406
Licensing	2-323		Application for examination and regis-		
Deposit by Juvenile Court clerk	11-939		tration		2-404
District Attorney			Training school		2-406
Docket fees	11-1502		Optometry Licensing Law		2-513, 2-514
Attendance in court	11-1502		Clerk's fee for recording license		2-513
Conviction of criminals	11-1502		Examination fee		2-514
Defending revenue officers	11-1502		Practitioners from other states, licensing		2-518
Examination of those charged with			Reinstatement on failure to pay renewal		
crime	11-1502		fee		2-514
Revenue cases	11-1502		Renewal of registration		2-514
Taxed as costs, when	11-1501		Outdoor sign license		1-232
District Court	11-1509		Pharmacists' Licensing Laws		2-609
Apportionment of fees collected	11-330		Pharmacists from other states or countries		
Clerk	11-1509		applying for license		2-604
Prepayment required	11-1507		Pleadings, amendments of		13-301, 13-308
Deposit required	11-1506		Plumber's licenses		2-1405
District of Columbia and its officials ex-			Podiatry Licensing Act		2-709, 2-710
empt	11-1519		Poor persons, exemption from prepayment		11-1508
Jurors	11-1512		Probate Court		11-1503
Mileage	11-1513		Deposits		11-1505
Per diem	11-1513		Judgment for costs		11-518
Nonresident plaintiffs	11-1506		Plenary proceedings		11-510
Deposit to secure costs	11-1506		Prepayment required		11-1505
Security for costs	11-1506		Register of wills		
Refunds	11-1506		As clerk		11-1503
			Prepayment required		11-1507



FEES AND COSTS—Continued		Sec.	FIDUCIARIES	Sec.
Proctors		11-1501	See EXECUTORS AND ADMINISTRATORS; GUARDIAN	
Recorder of deeds		45-708	AND WARD; RECEIVERS; TRUSTS	
Register of wills			Action against for accounting	16-101
Deposit in treasury		11-1504	Bonds and undertakings	
Fees of to be deposited		19-404	Continuance of liability	28-2407
Payable to collector of taxes		11-1504	In District Court	28-2403
Penalty for charging excessive fees		19-408	Payment to self in another capacity	28-2407
Table of fees, to be posted		19-406	Bonds, liable for inheritance and estate taxes	
Service of Police Court process		11-614		47-1616
Sewer connection		1-726	Checks	28-2305, 28-2306
Small claims and conciliation branch, Mu-			Creditor of fiduciary taking check, rights	
nicipal Court		11-804	and liabilities	28-2305
Solicitors		11-1501	Fiduciary drawing in favor of third per-	
Steam and other operating engineers, license			son	28-2305
fee		2-1504	Payable to or cashed by fiduciary	28-2306
Surveyor of District		1-616	Rights and liabilities of parties	28-2305, 28-2306
Commissioners' power to prescribe		1-629	Citation of law	28-2314
Paid to tax collector		1-616	Definitions of terms used	28-2301
Posting of schedule in office		1-629	Bank	28-2301
Transmission to United States Treasury		1-616	Fiduciary	28-2301
Taxed as costs, when		11-1501	In good faith	28-2301
United States Commissioner		11-1511	Person	28-2301
United States District Court, apportionment			Principal	28-2301
of fee collected		11-330	Definition under income tax law	47-1543
Veterinarians' Licensing Law		2-803, 2-805	Deposits in bank	28-2307—28-2310
Waiver, small claims and conciliation branch,			Adverse claims, fiduciary of claimant	26-203
Municipal Court		11-807	Deposit in name of two or more trustees,	
Water connections		1-726	checks, liabilities	28-2310
Witnesses		11-1520	Deposits in fiduciary's personal account,	
Board of Assistant Assessors		47-606	checks, liability	28-2309
Board of Dental Examiners calling		2-304	Fiduciary making deposit as such, checks	
Board of Equalization and Review		47-606	against account, liability	28-2307
Inquests		11-1515	Paid in name of principal, checks against	
Officers of United States courts ex-			account, liability	28-2308
cepted		11-1520	General laws, when applicable	28-2312
Police Court		11-615	Included in definition of "individual" under	
Cruelty cases		11-603	income tax law	47-1543
Trial boards of Police and Fire Depart-			Indorsement of negotiable instruments	28-2304
ments		4-601	Indorsee without notice	28-2304
Unemployment compensation hearings		46-311	Payment of personal debt, liability of	
Witness fees, Public Utilities Commission		43-419	parties	28-2304
			Inheritance and estate taxes, duties	
				47-1601—47-1629
FEE SIMPLE			Interpretation of law to effect uniformity	28-2313
Absolute or qualified estate		45-803	Law governing not retroactive	28-2311
Estate of inheritance		45-802	Negotiable instruments	28-2304
Form of deed		45-301	Creditor of fiduciary taking, liability	28-2304
FEE TAIL			Indorsement by fiduciary, force and effect	
Converted into fee-simple estate		45-802		28-2304
			Liability of parties, indorsement by fiduci-	
FEME SOLE			aries	28-2304
Powers of married women		30-201, 30-208	Payment to fiduciaries	28-2302
			Payor not liable for application	28-2302
FERN STREET VIADUCT			Personally exempt from stockholders' liability	29-220
Closing of grade crossings		7-516	Securities held by fiduciaries	28-2303
Use by street railway company, payment of			Registration of transfer, liability	28-2303
share of cost		7-515	Transfer of securities belonging to trust	28-2303
			Corporation or issuer registering transfer,	
FERRY LINES			liability	28-2303
Employers' Liability Act		44-401, 44-405	Uniform law	28-2301—28-2314
FICTITIOUS PAYEES				
Instruments payable to bearer		28-110	FIELD NOTES	
			Preservation by surveyor of District	1-616
FIDELITY COMPANIES				
Excise tax		47-1702		



<b>FIERI FACIAS</b>	Sec.	<b>FIRE DEPARTMENT—Continued</b>	Sec.
Enforcement of decrees in equity	11-326	Certificate of compliance required for cer- tain licenses	47-2302
<b>FIFTEENTH STREET</b>		Chief engineer	4-402, 4-404
McPherson Place Northwest, name changed	7-107 note	Salary	4-405
<b>FIFTH STREET</b>		Selection, eligible members	4-402
Abandonment in part	7-123 note	Classification of privates	4-402
<b>FIGHTS WITH ANIMALS</b>		Clerks	4-404
Penalty	22-1105	Columbia Engine-House, use authorized	4-412
<b>FIGURES</b>		Combinations to interfere with efficiency pro- hibited, penalty	4-407
Controlled by words, negotiable instruments	28-118	Conspiracies to interfere with efficiency pro- hibited, penalty	4-407
Use in pleadings	13-203	Death benefits for widow and children, condi- tions	4-507
<b>FILM STORAGE</b>		Death while in service, repayment of contribu- tions to relief fund	4-504
Motion picture film storage license	47-2313	Deputy chief engineers	4-404
<b>FINANCIAL INSTITUTIONS</b>		Experience, eligibility	4-404
See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS;</b>		Salary	4-405
<b>BUILDING ASSOCIATIONS; CREDIT UNIONS;</b>		Selection, eligible members	4-402
<b>PETTY LOANS</b>		Deputy fire marshals	4-404
<b>FINANCIAL RESPONSIBILITY ACT</b>		Salary	4-405
See <b>MOTOR VEHICLES</b>		Discontinuance of relief allowance, grounds	4-512, 4-513
Automobile owners	40-401—40-416	Emergency, cancelation of leave	4-410
<b>FINDINGS</b>		Entire district covered by department	4-401
Trial of civil cases without jury	11-317	Equalization of relief allowances	4-517
<b>FINES</b>		Exclusive jurisdiction of Commissioners	4-402
See <b>CRIMINAL OFFENSES</b>		False fire alarms, penalty	22-1119
Collection by District Court, apportionment between District and United States	11-330	Fining of members, powers of Commissioners	4-402
<b>FIREARMS</b>		Fire-fighting apparatus, construction in de- partment repair shop authorized	4-413
See <b>WEAPONS</b>		Fire marshal	4-404
<b>FIRE, CASUALTY, AND MARINE INSURANCE</b>		Salary	4-405
See <b>INSURANCE AND INSURANCE COMPANIES</b>		Franklin Engine-House, use authorized	4-412
<b>FIRE DEPARTMENT</b>		Free transportation of firemen by street rail- ways	44-213
See <b>POLICE AND FIREMEN'S RELIEF FUND</b>		Funeral expenses of deceased member, amount contributed from relief fund	4-509
Absence from District, leave	4-409	Hostlers and laborers	4-404
Age limits, original appointments, determina- tion	4-403	Inspectors	4-404
Age retirement allowance, conditions	4-507	Salary	4-405
Anacostia Engine-House, use authorized	4-412	Jury service, exemption of members	11-1420
Appointments and promotions	4-402	Leaves of absence	4-408—4-410
Application of Civil Service Act	4-402	Emergency, cancelation	4-180
Appropriations for clothing	4-406	Excess leave, consent of Commissioners	4-409
Arrears of pension, granting prohibited	4-517	Leave in excess of twenty days without pay	4-409
Assistant marine engineers	4-404	Leave in lieu of Sunday	4-410
Salary	4-405	Number of days with pay	4-408
Assistant superintendents of machinery	4-404	Lieutenants	4-404
Salary	4-405	Salary	4-405
Awards for meritorious service	4-701—4-704	Marine engineers	4-404
Annual awards made	4-701	Salary	4-405
Appropriation for medals	4-704	Marine firemen	4-404
Committee to make awards, members, service without compensation	4-702	Salary	4-405
Gold and silver medals	4-701	Medical examination of pensioners	4-512
Holders of medals, preference in promo- tion	4-703	Discretion of Commissioners	4-512
Battalion chief engineers	4-404	Failure to appear after notice, reduction or discontinuance of relief	4-512
Salary	4-405	Motor vehicles not to be transferred to other departments	40-504
Captains	4-404	Personal injuries, compensation, exception	1-311
Salary	4-405		



FIRE DEPARTMENT—Continued		Sec.	FIRE DEPARTMENT—Continued		Sec.
Pilots		4-404	Trial boards		4-601—4-604
Salary		4-405	Books and papers, power to compel production		4-601
Powers of Commissioners with reference to department		4-402	Compelling obedience to process by witness		4-603
Privates		4-402, 4-404	False swearing before, perjury		4-602
Class one		4-402	Fees of witnesses		4-601
Class two		4-402	Oath of members		4-604
Class three		4-402	Subpoenas, power to issue		4-601
First year probationary		4-405	Witnesses, power to compel attendance		4-601
Increase in salary denied, service unsatisfactory		4-802	Uniforms		4-406
Outstanding efficiency, additional compensation		4-802	Annual allowance		4-406
Removal for inefficiency		4-802	Union Engine-House, use authorized		4-412
Salary schedule		4-405, 4-801	Veterinary surgeons employed by district, right to call		4-404
Transfers from class to class		4-402	Voluntary retirement		4-508
Vacancies in classes two and three, filling		4-402	Age and service requirements		4-508
Promotions, medal-holders, preference		4-703	Retirement benefits, payment, amount		4-508
Property assigned and located by Commissioners		4-401	Volunteer fire organizations		4-411
Reappointment to force, redeposit of refund in relief fund		4-504	Apparatus and appliances of regular department, use		4-411
Reduction of relief allowance, grounds		4-512, 4-513	Suburban districts		4-411
Reductions in rank, powers of Commissioners		4-402	FIRE ESCAPES AND SAFETY PROVISIONS		
Refund from relief fund on separation from force		4-504	Alarm gong and striking stations		5-303
Removal of officers and members, powers of Commissioners		4-402	Alterations or changes in buildings, power to require		5-304
Residence within District required		4-409	"Apartment-house" defined		5-312
Territory within 12 miles of Capitol deemed within District		4-409	Combustible or nonfireproof building, restriction on construction or alteration		5-401—5-409
Resignation from service		4-407	Definition of terms used		5-312
Notice required		4-407	Elevators		5-305
Withdrawing without notice, permission of Commissioners		4-407	Enclosure of shaft		5-305
Retired member, active service during emergencies, power to require		4-514	Shaft required to terminate in fireproof compartment		5-305
Retiring and relief board, members, powers and duties, report of findings		4-510	Enjoining use of building, violation of Fire Escape Act		5-311
Rules and regulations		4-402	Failure to construct after notice		5-310, 5-313
Salaries		4-405	Commissioners causing erection, assessment of cost against property		5-310
Deductions for relief fund		4-503, 4-504	Commissioners constructing, taxation of cost against property		5-313
Privates		4-801	Correction of condition by Commissioner, criminal prosecution not waived		5-313
Sergeants		4-404	Failure to provide after notice, penalty		5-308
Salary		4-405	Failure to provide lights and signs, penalty		5-308
Sick leave		4-409	Fire escapes		
Strikes prohibited		4-407	Additional fire escapes, erection, power to require		5-304
Superintendent of machinery		4-404	Apartment-houses		5-301
Salary		4-405	Fire resisting doors to stairways		5-301
Surgeons		4-106, 4-124, 4-404	Fire resisting stairways, buildings not more than three stories nor more than 40 feet high		5-301
Attendance on members without charge		4-404	Asylums		5-301
Duties		4-124	Buildings in which required		5-301
Examination of applicants for appointment, promotion, or retirement		4-404	Buildings three or more stories in height		5-301
Number		4-106	Sleeping quarters for ten or more persons, above first floor		5-301
Qualifications and duties		4-124	Dormitories		5-301
Suspension of members, powers of Commissioners		4-402	Duty to install		5-303
Telephone, when members required to have		4-409	Educational institutions		5-301
Temporary disability allowance		4-506	Exempted buildings		5-301
Medical, surgical, or hospital treatment		4-506	Hospitals		5-301
Sickness or injury in course of employment		4-506			
Total disability allowance, conditions		4-507			



FIRE ESCAPES AND SAFETY PROVISIONS—Continued		Sec.	FIRE LIMIT—Continued	Sec.
Fire escapes—Continued			Public electric lamp, overhead wires prohibited	7-702
Hotels	5-301		Removal of snow and ice from sidewalk	7-801—7-806
Inspection by assistant inspector of buildings	1-729		<b>FIRE MARSHALS</b>	
Lodging-houses	5-301		Fire Department	4-404
Office buildings	5-301		Salary	4-405
Places of amusement	5-301		Licenses requiring approval	47-2313—47-2315
Stores	5-301		Explosive storage or sale establishments	47-2314
Fire extinguishers	5-303		Gasoline stations	47-2314
Failure to install after notice, penalty	5-308		Kerosene storage or sale establishments	47-2314
Installing in buildings, when required	5-303		Motion picture film storage establishments	47-2313
Fireproof buildings, exception from requirement	5-305		Pyroxylin storage establishments	47-2315
Fireproofing of windows and openings when required	5-305		<b>FIREPROOF</b>	
Guide signs and lights	5-303		Definition	5-312
Hall light	5-302		<b>FIRE RESISTING</b>	
Hall or passageway, obstruction prohibited	5-306		Definition	5-312
Inspection of building	5-316		<b>FIRES</b>	
Commissioners to fix fee	5-316		Police protection.	4-119
Deposit and apportionment of fees	5-316		<b>FIREWORKS</b>	
Printing and display of schedule of fees	5-316		Power to prohibit use	1-224
Notice requiring correction, service, method	5-315		<b>FISCAL AFFAIRS</b>	
Notice requiring erection	5-315		See TAXATION AND FISCAL AFFAIRS	
Content	5-309, 5-310, 5-315		<b>FISH</b>	
Location	5-309		See GAME AND FISH LAWS	
Service of notice, method	5-310		Sale by weight required	10-120
Specification of character and number	5-309		Wholesale dealers, license	47-2327
Obstruction of approaches prohibited	5-307		<b>FISH WHARF AND MARKET</b>	
Orders, power of Commissioners to issue	5-304		Control and regulation by Commissioners of District	10-135
Places of employment	5-302, 5-303		Location	10-135
Alarm gong	5-303		Wharfage and dockage fees, determination and collection by Commissioners	10-135
Duty to install	5-302		<b>FIXTURES</b>	
Fire extinguishers	5-303		Depredation of, penalty	22-3104
Guide-signs and lights	5-303		<b>FLAGS</b>	
Keeping lighted at night	5-302		Advertising, use for	22-3414
Stairway lights	5-303		Display, Capitol grounds	9-111
Standpipes	5-303		Mutilating, defiling	22-3414
Ten or more persons employed above second story	5-302		<b>FLAT</b>	
Three-story buildings used as stores or for offices, exception, stairways	5-302		See APARTMENT HOUSES	
Regulations, power of Commissioners to adopt and enforce	5-304		Definition	5-312
Right of entry to correct conditions	5-314		<b>FOOD AND DRUGS</b>	
Interfering with or preventing, penalty	5-314		See DRUG ADDICTS; NARCOTIC DRUGS	
Stairway lights	5-303		"Adulterated article" defined	33-103
Stairways, enclosure	5-305		Adulterated candy	33-201
Stairways, obstruction prohibited	5-306		Penalty for manufacture	33-202
Standpipes	5-303		Penalty for sale	33-202
Time within which construction required	5-309		Prosecutions, prosecuting attorneys to appear	33-203
Violation of law or regulations promulgated thereunder, penalty	5-308		Adulteration	33-101
<b>FIRE HAZARDS</b>			Not to be exposed for sale	33-101
Inflammable substances, Commissioner's power to regulate storage	1-224		Not to be sold	33-101
<b>FIRE INSURANCE</b>			Best quality to be furnished purchaser, exceptions	33-102
See INSURANCE AND INSURANCE COMPANIES			Bread standards, sale and weight regulations	10-113
<b>FIRE LIMIT</b>				
Barbed-wire fences, construction or maintenance, restrictions, penalties	7-1101—7-1105			



**FOOD AND DRUGS—Continued**

	Sec.
<b>Candy</b>	33-201
Adulteration	33-201—33-203
Factory license	47-2327
Manufacture of adulterated, prohibited	33-201
Offer for sale of adulterated, prohibited	33-201
Sale of adulterated, prohibited	33-201
<b>Dairies, requirements</b>	33-302
Application for permit	33-302
Certificate of soundness of cattle	33-302
Permit	33-302
Permit holders to report communicable disease	33-312
"Person" defined	33-302
Revocation of permit, grounds	33-305
Suspension of permit	33-303
Grounds	33-303
Notice of suspension	33-303
Statement of reasons	33-303
<b>Definitions</b>	
Adulterated drug	33-103
Adulterated food	33-103
Drug	33-102
<b>Drug addict, fiduciary's bond</b>	28-2403
<b>Drugs</b>	
Compounders subject to druggist license	47-2308
Compounding, licensed pharmacist	2-601
Dentists dispensing, restrictions	2-611
Directions for use on label	2-614
Dispensers subject to druggist license	47-2308
Display of permit or license to sell	2-606
Exceptions from Pharmacy Act	2-601
Fraudulent representations to obtain prohibited	2-613
Leaving in public place prohibited	2-615
Narcotic drugs	33-401—33-425
Peddling on streets prohibited	2-615
Permit to sell	2-601
Hearings before board, procedure, appeal	2-606
Renewal	2-606
Physicians and surgeons dispensing, restrictions	2-611
Preservation of prescription	2-614
Regulation of sale	2-601
Sale, licensed pharmacist	2-601
Sale on prescription	2-610
Contents of prescription	2-610
Dentist authorized to issue	2-610
Diarrhea and cholera remedies excepted	2-610
Dover powder excepted	2-610
Liniments and ointments, exception	2-610
Physicians authorized to issue	2-610
Preparations exempted from act	2-610
Preservation of prescription	2-610
Refilling of prescription prohibited	2-610
Sale and wholesale excepted	2-610
Veterinarians authorized to issue	2-610
Veterinarians dispensing, restrictions	2-611
<b>Examination for adulteration</b>	33-104
<b>Federal laws applicable to District, reference</b>	

pp. 679, 680

**FOOD AND DRUGS—Continued**

	Sec.
<b>Food and food products</b>	
Brands, forging or imitating, penalty	22-1402
Commission merchant's license	47-2327
Dealer's license	47-2327
Frozen food products, standard measures, capacity	10-119
Market stands, license	47-2327
Measure and inspection of commodities by Superintendent of Weights and Measures	10-124
Packages of food, marking with weight, measure, or count required, tolerances	10-117
Proration of price with reference to quantity sold	10-123
Weighing or inspecting of commodities by Superintendent of Weights and Measures	10-124
"Food" defined	33-102
<b>Health officers</b>	
Not to be hindered in enforcement	33-108
To enforce adulteration law	33-104
To investigate complaints of adulteration	33-105
<b>Milk and milk products</b>	
Production and sale, regulatory law	33-301—33-322
Standard containers	10-114
Portion of sample analyzed to be sealed and retained for defendant	33-107
Prosecutions for adulteration	33-109
Repeal of prior laws, exception	33-110
Rules and regulations for enforcement	33-104
Sale to examiner required	33-106
Vegetables, standard containers	10-115
<b>FOOTBALL</b>	
Grounds for, license	47-2323
<b>FORCIBLE ENTRY AND DETAINER</b>	
Definition	11-735
Judgment and execution	11-737
Judgment, when not bar	11-739
Landlord's action in Municipal Court	45-910
Plea of title	11-738
Certification to District Court	11-738
Undertaking	11-738
Procedure	11-735
Summons	11-735
Service	11-736
<b>FOREIGN BILLS OF EXCHANGE</b>	
See <b>BILLS AND NOTES</b>	
<b>FOREIGN CORPORATIONS</b>	
See <b>CORPORATIONS FOR PROFIT; CORPORATIONS IN GENERAL</b>	
Financial statement, semiannual publication	29-105
<b>FOREIGN COUNTRIES</b>	
Acts of notary of District, legality	1-510
Diplomatic, consular officers, property, interference with	22-1115
Penalty	22-1116
<b>FOREIGN GOVERNMENTS</b>	
Income exempted from income tax	47-1504



<b>FOREST SERVICE</b>	Sec.	<b>FRANCIS SCOTT KEY BRIDGE</b>	Sec.
Chief, member of National Capital Park and Planning Commission	8-101	Electrical propulsion, use by railways required	7-511
<b>FORFEITURES</b>		Gas and water-mains on bridge	7-511
Jurisdiction of United States District Court	11-306	Interurban railroads, right to use bridge	7-511
<b>FORGERY</b>		Paving between tracks, payment of cost	7-511
Alcoholic beverage stamps, penalty	25-124	Power, telegraph and telephone wires or cables on bridge	7-511
Criminal offense, penalty	22-1401	Use for highway traffic	7-511
Diploma or other evidence of graduation in healing arts	2-126	Washington and Old Dominion Railway, right to use bridge	7-511
Labels, trade-marks, packages	22-1402	<b>FRANKLIN ENGINE-HOUSE</b>	
Narcotic drugs		Use authorized	4-412
Forged labels	33-420	<b>FRANKLIN SQUARE</b>	
Forgery to obtain	33-420	Street fronting, railroad prohibited	7-1202
Negotiable instruments	28-124	<b>FRATERNAL BENEFIT ASSOCIATIONS</b>	
Estoppel to deny signature	28-124	See <b>INSURANCE AND INSURANCE COMPANIES</b>	
Instruments unenforceable	28-124	Act relating to	35-901—35-928
<b>FORMS</b>		Definition	35-901
Board of Optometry, members, oath	2-503	<b>FRATERNAL ORGANIZATIONS</b>	
Deed for fee-simple estate	45-301	Insuring members only, exemption from insurance company taxes	47-1808
Executor's deed	45-301	<b>FRAUD</b>	
Fee-simple deed	45-301	See <b>FRAUDULENT CONVEYANCES; SALES, UNIFORM ACT; STATUTE OF FRAUDS</b>	
Husband and wife, deed for fee-simple estate	45-301	Advertisement, false	22-1411—22-1413
Lease	45-301	Definition	22-1411
Life estate deed	45-301	Penalty	22-1413
Mortgage, with or without power of sale	45-301	Prosecution	22-1412
Trust deed for particular purpose	45-301	Architect's certificate of registration, cancellation	2-1027
Trustee's deed under decree	45-301	Blind persons, obtaining aid for by	46-113
<b>FORNICATION</b>		Causing defective title to negotiable instrument	28-405
Definition, penalty	22-1001	Check, draft or order, uttering with insufficient funds	22-1410
<b>FORT DAVIS</b>		Conversion by conditional vendee	22-1406
Made part of park system	8-125	Creditors, intent to defraud	12-401
<b>FORT DUPONT</b>		Decedents' estates	22-1404, 22-1405
Made part of park system	8-125	Concealing writings	22-1405
<b>FORTUNE TELLERS</b>		Converting assets	22-1404
For charity	47-2342	Misusing property	22-1404
Licenses	47-2342	Secreting writings	22-1405
Approval by major and superintendent of police	47-2342	Dentists, license to practice obtained by, revocation or suspension	2-311
Fees	47-2342	Dependent child home care allowance, obtaining by	32-708
Persons exempted	47-2342	False weighing or measuring devices prohibited	10-107
Residence requirement	47-2342	Fraternal benefit memberships, fraudulent representations regarding	35-913
<b>FORTY-FIRST STREET</b>		Gambling and gaming transactions	16-704, 16-706
Abandonment in part	7-123, note	Actions to recover losses by	16-706
<b>FORTY-FOURTH STREET</b>		Penalties	16-704, 16-706
Widening, use of land owned by United States authorized	7-126	Winning more than \$26.67 by	16-704
<b>FOUNTAIN</b>		Jury and jurors	22-1414
Police department memorial fountain, acceptance and maintenance authorized	4-901	Collusion in drawing	22-1414
<b>FOURTH STREET SOUTHEAST</b>		Jury box, tampering with	22-1414
Widening, use of land owned by United States authorized	7-126	License to practice healing arts, fraud in obtaining	2-124
<b>FOWLS</b>		Marriages procured by, voidable	30-103
See <b>FISH AND GAME LAWS; POULTRY</b>		Narcotic drugs, obtaining by	33-420



<b>FRAUD—Continued</b>	Sec.	<b>FUEL</b>	Sec.
Old-age assistance, obtaining by	46-210	Wood, sale, standards of measurement	10-118
Procuring marriage by, as ground for annulment	16-403	<b>FUGITIVES FROM JUSTICE</b>	
Purchasers, intent to defraud	12-402	See <b>CRIMINAL PROCEDURE</b>	
Slugs	22-1407, 22-1408	Detention and extradition	23-401—23-410
Coin machine, operating with	22-1407	<b>FUNGIBLE GOODS</b>	
Issuing	22-1408	Deposit in warehouse	28-1916, 28-1917
Manufacturing	22-1408	Apportionment among depositors	28-1916
Possession	22-1408	Liability of warehouseman to depositors	28-1917
Unemployment compensation, obtaining by	46-319	Warehouseman's right to mingle	28-1916
Warehouse receipts, fraudulent negotiation, effect	28-2011	<b>GALLINGER MUNICIPAL HOSPITAL</b>	
Wills	22-1403	See <b>HOSPITALS AND ASYLUMS</b>	
Destroying	22-1403	<b>GALLON</b>	
Mutilating	22-1403	Liquid gallon, dimension	10-119
Stealing	22-1403	<b>GAMBLING AND GAMING TRANSACTIONS</b>	
<b>FRAUDULENT CONVEYANCES</b>		See <b>BUCKET SHOPS; LOTTERIES</b>	
Intent to defraud creditors	12-401	Assaulting, beating, fighting, on account of money won by	16-705
Bonds	12-401	Bookmaking	22-1508
Choses in action	12-401	Bookmaker	22-1508
Declared void	12-401	Penalty	22-1508
Deemed question of fact	12-401	Bucket shops	22-1509—22-1512
Evidences of debt	12-401	Bucketing, penalty	22-1510
Goods	12-401	Communicating, displaying quotations	22-1511
Innocent purchaser protected	12-401	Corporations	22-1510
Judgments and decrees suffered	12-401	Domestic, dissolving	22-1510
Real property	12-401	Foreign, dissolving	22-1510
Intent to defraud purchasers	12-402	Definitions	22-1509
Declared void	12-402	Bucketing	22-1509
Grantee privy to fraud	12-402	Bucket shopping	22-1509
Purchaser with notice	12-402	Commodities	22-1509
Real property only	12-402	Contract	22-1509
Suits to vacate	12-403	Keeper	22-1509
Assignees	12-403	Person	22-1509
Executor or administrator	12-403	Securities	22-1509
Liability of holder	12-403	Demand for statement on purchases, sales	22-1512
Receivers	12-403	Keeping, penalty	22-1510
Trustees	12-403	Refusing demand for statement, effect	22-1512
<b>FREDERICK DOUGLASS MEMORIAL AND HISTORICAL ASSOCIATION</b>		Confidence games	22-1506
Property exempted from taxation	47-813	Any swindling game, playing, penalty	22-1506
<b>FREEDMEN'S HOSPITAL</b>		Three card monte	22-1506
See <b>HOSPITALS AND ASYLUMS</b>		Destruction of property seized	4-146
<b>FREEHOLD ESTATES</b>		Duty of Commissioners to enforce laws concerning	4-119
Estates of inheritance	45-804	Gambling-houses, complaints, right of entry, searches and seizures	4-145
Life estates	45-804, 45-805	Gaming	22-1504—22-1508
<b>FREE TEXT-BOOKS</b>		Gaming tables	22-1504, 22-1505, 22-1507
Elementary and high schools	31-401—31-406	Definition	22-1507
<b>FRESH PURSUIT</b>		Inducing play, penalty	22-1504
See <b>CRIMINAL PROCEDURE</b>		Permitting establishment on premises, penalty	22-1505
<b>FRONT-FOOT RULE</b>		Setting up, penalty	22-1504
Assessments for street improvement	7-611, 7-612	Using, penalty	22-1504
Street improvement assessment	7-622	Gaming transactions	16-701—16-707
Limitation on amount	7-625	Contracts growing out of, to be void	16-701
<b>FRUITS</b>		Defendant discovering and repaying losses, effect	16-703
Apples, standard box, dimension	10-115	Fraud	16-704, 16-706
Baskets, standard sizes	10-115	Action to recover losses by	16-706
Berries, standard container	10-115	Penalties	16-704, 16-706
Bushel and half-bushel boxes, dimensions	10-115	Winning more than \$26.67 by	16-704
Hamper, dimensions	10-115		
Standard container	10-115		



**GAMBLING AND GAMING TRANSACTIONS—Continued**

Gaming transactions—Continued	
Recovery where contract void	16-707
Suits to recover losses	16-702
Lotteries	22-1501, 22-1503
Permitting ticket sales on premises, penalty	22-1503
Possession of tickets, penalty	22-1502
Promotion, penalty	22-1501
Selling tickets, penalty	22-1501
Pools	22-1508
Bookmaking	22-1508
Election	22-1508
Racing	22-1508
Prosecution of persons arrested	4-146
Three card monte	22-1506

**GAME AND FISH LAWS**

Bass	
Catching, displaying, out of season	22-1602
Sale of	22-1603
Captivity, sale of certain birds raised in	22-1627
Catching or possessing	22-1614
Deer meat, possession of, out of season	22-1613
English sparrows, shooting without permit	22-1623
Explosives, drugs, poisons, use of in fishing	22-1606
Forfeiture of equipment, violations of fish laws	22-1608
Game birds, killing in District, or attempt	22-1621
Game, fish caught outside District, no defense	22-1619
Informers to receive one-half of fines	22-1620
Inspection of premises, preventing	22-1616
Licenses for scientific purposes	22-1626
Net fishing, exceptions and permits	22-1601
No-trespass signs, defacing, penalty	22-1617
Penalties, violation of fish laws	22-1607
Posted lands, shooting, hunting on, penalty	22-1617
Purchase, sale, possession for sale of certain birds	22-1625
Rabbits, squirrels, possession out of season	22-1610
Sale of certain fish under 9 inches	22-1605
Shad or herring, possession, sale of	22-1604
Squirrels, chipmunks, rabbits, trapping, catching	22-1622
Sunday shooting, penalty	22-1618
Traps, nets, snares for wild fowl, possession of	22-1615
Water-rail, reed bird, game birds, possession of	22-1612
Wild animals, shooting injured or diseased	22-1623
Wild duck, geese, waterfowl, hunting, disturbing	22-1624
Wild ducks, geese or brant, snipe, plover, possession of	22-1611
Wild fowl, trapping, netting, ensnaring	22-1615
Woodcocks, possession of out of season, penalty	22-1609

**GARAGES**

Failure to report damaged motor vehicles, penalty	40-611
License	47-2334
Lien	38-201—38-203

**GARAGES—Continued**

To report motor vehicles damaged in accidents or struck by bullets	40-611
<b>GARBAGE</b>	
Apartment-houses, right to burn own refuse	6-507
Business houses, right to burn own refuse	6-507
Collection and disposal of, declared municipal function	6-504
Offering to or acceptance by employee of gift prohibited, penalty	6-504
Personnel, employment authorized	6-509
Purchase of motor-trucks and trailers authorized	6-509
Collection by District authorized	6-504
Commissioners' power to make necessary regulations concerning	6-501
Authorized to provide penalties	6-501
Contracts for collection and disposal of	6-502
Duration	6-502
Employee or contractor prohibited from accepting gifts, penalty	6-504
Power vested in Commissioners	6-502
Subject to appropriations by Congress	6-502
Facilities for collection, acquisition, and use by District	6-504
Hotels, right to burn own refuse	6-507
Incinerators for combustible refuse	6-505—6-511
Acquisition and operation authorized	6-505
Acquisition of buildings and machinery authorized	6-509
Appropriation	6-510
Arlington County, Virginia, use of incinerators	6-511
Completion, abandonment of leased plan	6-510
Condemnation of sites	6-505
Construction authorized	6-506
Entry into possession of sites by District	6-505
Location of sites, approval by National Capital Park and Planning Commission	6-505
Montgomery County, Maryland, use of incinerators	6-511
Notice of commencement of operation	6-507
Occupation of highways and streets leading to sites	6-505
Penalties for violating law	6-508
Prince Georges County, Maryland, use of incinerators	6-511
Street sweepings	6-506
Night soil, collection and disposal	6-502
Reduction plants	6-504—6-509
Acquisition and operation authorized	6-504
Cost of operation, payment	6-504
Incinerators	6-505—6-511
Sale of products	6-504
Regulations concerning, duty of Commissioners to enforce	4-119
Residences, right to burn own refuse	6-507
Sale, of salvageable material by owners or Commissioners of District	6-507
Use for feeding of live stock and poultry authorized	6-503

**GARFIELD MEMORIAL HOSPITAL**

See HOSPITALS AND ASYLUMS



**GARNISHMENT**

See <b>ATTACHMENT AND GARNISHMENT; EXECUTIONS</b>	
Goods in warehouse	28-1919
Negotiable receipts outstanding	28-1919
Transferred nonnegotiable receipts outstanding	28-2006
Warehouse receipts by creditors	28-1920

**GAS**See **GASOLINE AND OIL**

Fee for permit to make connection	1-726
Gas-fitter, employment of unlicensed gas-fitter prohibited	2-1407
Gas lines, tampering with, penalty	22-3116
Gas mains	
Extension for street light	7-706
Laying in street before improvement	7-605
Laying in street, permit required, restoration of street	7-1204

**GAS COMPANIES**

Excise tax	47-1701
------------	---------

**GAS CORPORATIONS**See **PUBLIC UTILITIES**

Definition	43-113
------------	--------

**GASOLINE AND OIL**See **TAXATION AND FISCAL AFFAIRS; WEIGHTS, MEASURES, AND MARKETS**

Automatic measuring pump	10-122
Motor fuel tax	47-1901—47-1919
"Out of order" sign, when required	10-122
Subject to inspection and approval or condemnation	10-122
Sale location license	47-2314
Approval of fire marshal	47-2314
Fee	47-2314

**GAS PLANTS**See **PUBLIC UTILITIES**

Definition	43-112
------------	--------

**GEESE**See **GAME AND FISH LAWS****GENERAL ACCOUNTING OFFICE**

Settlement of accounts with	47-309
-----------------------------	--------

**GENERAL COURT TERM**See **UNITED STATES DISTRICT COURT**

Admission of persons to bar	11-312
Assignment of judges to special terms	11-312
Assistant clerks, appointment	11-312
Auditor, appointment	11-312
Cases not heard	11-312
Censure, suspension, or expulsion of member of bar	11-312
Clerk, appointment	11-312
Criers for special terms, appointment	11-312
Messengers for special terms, appointment	11-312
Municipal judges, hearing of charges against	11-312
Number of judges sitting	11-310
Officers and employees of court, appointment	11-312
Open at all times for transaction of business	11-312
Powers in general	11-312
Regulation of special term	11-312
Rules of practice and procedure, power to adopt	11-312

Sec.

**GENERAL EDUCATION BOARD**

Sec.

Property exempted from taxation	47-820
---------------------------------	--------

**GEORGETOWN**

District of Columbia, successor to corporation of Georgetown	1-104
Existence as separate and independent city abolished	1-107
Made part of city of Washington	1-107
Port of entry	1-107
Records and other documents made property of District	1-106

**GEORGETOWN RESERVOIR**

Site transferred to jurisdiction of Commissioners	8-142
---	-------

**GEORGE WASHINGTON MEMORIAL PARKWAY AND PLAYGROUND SYSTEM**

Acquisition and establishment authorized	8-101 note
--	------------

**GEORGIA AVENUE**

Abandonment in part	7-123 note
---------------------	------------

**GIFT ENTERPRISE**

Conduct prohibited	22-3402
Definition	22-3401
Penalty	22-3403

**GIFTS**

Charitable uses, rule against perpetuities in-applicable	45-102
Property acquired by gift, exemption from income tax	47-1504

**GILL**

Liquid gill, dimension	10-119
------------------------	--------

**GIN**See **ALCOHOLIC BEVERAGES**

Definition of "spirits" includes	25-103
----------------------------------	--------

**GLOVE**

Boxing exhibition, weight	2-1205
---------------------------	--------

**GLOVER PARKWAY AND CHILDREN'S PLAYGROUND**

Acceptance of dedicated land authorized	8-162
Made part of park system	8-163

**GOLD**

Poisonous compounds, sale, restrictions	2-612
---	-------

**GONGS**

Power to regulate and prohibit noises	1-224
---------------------------------------	-------

**GOOD FAITH**

Definitions, fiduciaries law	28-2301
------------------------------	---------

**GOODS, WARES, AND MERCHANDISE**See **SALES; STATUTE OF FRAUDS**

Conveyance in fraud of creditors	12-401
----------------------------------	--------

**GOVERNMENT EMPLOYEES RELIEF ASSOCIATIONS**

Exemption from insurance company taxes	47-1808
--	---------

**GRADE CROSSING**

Baltimore and Ohio Railroad Company prohibited from establishing	7-1212
Cost and elimination, payment	7-1214, 7-1215



GRADE CROSSING—Continued		Sec.	GUARDIAN AND WARD—Continued		Sec.
Elimination by construction of viaducts or underpasses		7-1214, 7-1215	Board of Public Welfare—Continued		
Existing streets, construction of underpasses or viaducts		7-1215	Discharge of child from guardianship		3-125
New streets, underpasses or viaducts constructed		7-1214	Visitation of ward		3-114, 3-123, 3-124
Pennsylvania Railroad Company constructing, approval by Commissioners		7-1227	Bonds and undertakings, in District Court		28-2403
Subsequent use of underpass or viaduct by railroad, payment of share of cost		7-1215	Corporate stock, voting		29-221
GRAND JURY			For married women under 21		30-203
See JURIES AND JURY COMMISSION			Grant of letters by Probate Court		11-504
GRAND LARCENY			Insanitary buildings, ownership, condemnation, appointment of guardian		5-609
See LARCENY			Juvenile Court		11-917
GRANT			Marriage of ward, consent to		30-111
"Grant" in conveyance passes whole estate in absence of contrary showing		45-202	Minors		21-101
Power to dispose by devise cannot be executed by grant		45-1018	Ancillary guardians, property in District		21-115
Power to dispose by grant cannot be executed by will		45-1018	Appointment by will or deed		21-108
GRANT ROAD			Appointment of guardians		21-103
Abandonment in part		7-123 note	Consent of infant over 14		21-111
Closing in part authorized, consent of property-owners		7-123	Election of infant over 14		21-113
GRAPES			Enlistment of indigent boys		21-104
Baskets, standard sizes		10-115	Guardian of estate		21-110
GRAVE ROBBERY			Orphans entitled to property		21-109
See DEAD HUMAN BODIES			Preferences in appointment		21-112
Dead bodies, buying or selling		22-3103	Preparation of guardianship papers for enlistments		21-105
Penalty		2-206, 22-3103	Bond of guardians		21-118
GRAVES			Additional		21-121
See CEMETERIES AND CREMATORIES			Counter security		21-122
GREENWICH PARKWAY			Form		21-119
Dent Place Northwest, name changed		7-107 note	One bond for several wards		21-120
GROCERY STORES			Relief of surety		21-123
License		47-2327	Bond of natural guardians		21-106
GROUP			Expiration		21-129
Included in definition of "partnership" under Income Tax Law		47-1543	Guardian's rights and duties		21-124
GROWING CROPS			Accounts		21-126
Destroying, penalty		22-3108	Allowances made before bond given		21-127
GUARANTY COMPANIES			Compensation		21-126
Excise tax		47-1702	Final account		21-130
GUARDIAN AND WARD			Inventory		21-125
See BOARD OF PUBLIC WELFARE; DRUNKARDS; DRUG ADDICTS; INSANE PERSONS			Maintenance and education		21-126
As fiduciary under Income Tax Law		47-1543	Possession of property		21-124
Board of Public Welfare,		3-114, 3-117, 3-123	Sale of realty		21-128
Binding out or apprenticing of children		3-117	Sales		21-126
Children committed to care of board		3-114, 3-123	Husband as guardian		21-114
Children over whom board has supervision		3-116	Interfering with minor's estate		21-107
Children under 17 committed to board by Juvenile Court		3-120, 3-121	Natural guardians		21-101
Contracts for care of dependent children		3-115	Parents as natural guardians		21-101
			Suits by ancillary guardian		21-116
			Testamentary guardians		21-102
			Personally exempt from stockholders liability		29-220
			Prostitution of female ward, guardian consenting, penalty		22-2705
			GUARDIANS AD LITEM		
			See EMINENT DOMAIN; PROCESS		
			Appointment for infants		13-105
			Appointment for persons non compos mentis		13-107
			Eminent domain, land for street		7-204
			For probate of will		19-303
			Service of process		13-105
			GUIDES		
			License		47-2338
			Approval of major and superintendent of police		47-2338
			Examination		47-2338
			Fee		47-2338
			Regulation		47-2338



<b>GUNS</b>			<b>HEALING ARTS PRACTICE ACT—Con.</b>	<b>Sec.</b>
See <b>WEAPONS</b>			Applications for license—Continued	
Dealer's license	47-2340		Filed with commission	2-119
<b>GUTTERS</b>			Licenses in medicine, surgery, or mid- wifery under prior law	2-119, 2-120
Assessment of costs against abutting property	7-623		Licenses to be issued on examination	2-119, 2-122
Exemption from assessment for replacement cost	7-626		Applications for licenses and registration	2-104
Paving under permit, assessment of cost	7-627		Certification to proper examining board	2-104
Property abutting two or more streets, limita- tion on aggregate assessment	7-629		Classification	2-104
<b>HABEAS CORPUS</b>			Numbering and recording	2-104
Copy of commitment, failure to deliver, for- feiture	16-805		Reciprocity as basis of application	2-119, 2-121
Evasion of writ	16-803		Approved schools and hospitals	2-103
Inquiry into cause of detention	16-806		Entry in register	2-103
Issuance of writ	16-801		Redetermination of standing	2-103
Judges of District Court authorized to issue writ	11-315		Refusal of credit for diploma or degree from unapproved school or hospital	2-103
Petition, sufficiency	16-801		Basic sciences, Boards of Examiners	2-106—2-108
Refusal to produce, forfeiture, penalty	16-804		Certification of applicant to other boards	2-108
Release, on bail	16-806		Chairman	2-106
Remander	16-806		Educational qualifications	2-107
Right to writ by persons entitled to custody	16-808		Examination of applicants for license	2-108
Service and return of writ	16-802		Examinations, power to conduct	2-106
Traversing return	16-807		Federal or District employees, appoint- ment authorized	2-106
<b>HACKS</b>			Number of members	2-106
See <b>PUBLIC HACKS</b>			Qualifications of members	2-106, 2-107
<b>HACK STANDS</b>			Reciprocity with other states	2-108
See <b>TAXICABS</b>			Reference of applicant for license to board	2-108
<b>HAMPERS</b>			Reports	2-106, 2-108
Fruits and vegetable container, standard sizes and dimensions	10-115		Secretary	2-106
Use of other than standard containers pro- hibited	10-116		Serving as teacher while on board pro- hibited	2-107
<b>HARBORING</b>			Term of office	2-106
Boys escaped from National Training School	32-818		Time of holding examination	2-114
Escaped prisoner, penalty	22-2601		Boards of Examiners in general	2-106
Female under 16 for purposes of prostitu- tion	22-2704		Compensation determined by commission	2-135
Girls escaped from National Training School	32-818, 32-907		Reports open to inspection	2-118
<b>HARBOR REGULATIONS</b>			Bond for payment of expenses of administra- tion	2-135
Affecting navigable waters, approval of Sec- retary of War	22-1701		Chiropractic, Board of Examiners	2-106
Commissioners of District to make	22-1701		Examination of applicants	2-106, 2-114—2-117
Establishment	22-1701		Federal or District officers or employees, appointment authorized	2-106
Fees payable into treasury	47-127		Number of members	2-106
Penalty for violation of	22-1701		Qualifications	2-106
<b>HAWKERS AND PEDDLERS</b>			Term of office	2-106
Badge	47-2336		Christian Science, exemption from act	2-134
License	47-2336		Class of practice shown by license	2-118
Weighing and measuring devices, duty to have tested	10-103		Clerks, power to appoint, suspend, or remove	2-105
Weights and Measures Law, right of enforcing officers to stop and make inspections or tests	10-126		Commission on licensure	
<b>HEALING ARTS PRACTICE ACT</b>			Annual report to Congress, contents	2-138
Altering or forging license or evidence of registration prohibited	2-126		Contracts for use and occupancy of quarters	2-105
Applications for license	2-119—2-122		Creation	2-103
Contents	2-119		Duty to enforce law	2-137
Fee	2-119		Election of president and vice-president	2-103
			Expenditure of funds, method	2-135
			Indebtedness, limitation on power to incur	2-105
			Issuance of licenses to applicants	2-118
			Members of commission	2-103
			Officers and employees, power to appoint, suspend, or remove	2-105
			Petition to enjoin unlawful practice	2-132
			Petition to suspend or revoke license	2-123



HEALING ARTS PRACTICE ACT—Con.	Sec.	HEALING ARTS PRACTICE ACT—Con.	Sec.
Commission on licensure—Continued		Examination of applicants for license—Con.	
Quarters for commission	2-105	Diagnosis and prevention of communicable diseases, selection of questions	2-116
Rules, power to adopt	2-103	Disclosure of identification number prohibited	2-124
Seal, adoption, judicial notice	2-103	Giving unauthorized advantages prohibited	2-127
Secretary-treasurer	2-103	Imposing unfair disadvantages prohibited	2-127
Supplies, power to purchase	2-105	Method of conducting	2-115
Compensation of administrative officers and employees	2-135	Modification of rules governing	2-115
Corporation counsel, duties	2-137	Nature and extent prescribed by commission	2-115
Counsel, power to appoint, suspend, or remove	2-105	Notice of time and place given	2-114
Counterfeiting seal of commission prohibited	2-126	Number assigned to each applicant	2-117
Criminal prosecutions		Premature disclosure of question prohibited	2-125
Conducted by district attorney	2-137	Preparation and distribution of questions	2-116
Payment of cost	2-135	Preservation of examination papers	2-118
Definition of terms used	2-101	Questions and answers open to inspection	2-118
Demonstrations or clinics, exemption from act	2-133	Rating of tests	2-117
Display of license	2-118	Report of findings to commission	2-117
District attorney, duties	2-137	Same questions submitted to applicants for same license	2-115, 2-116
Drugless healers, Board of Examiners	2-106, 2-111	Secrecy as to identity of examination paper	2-115
Basic sciences, knowledge of required	2-112	Submission of question to commission	2-116
Chairman	2-106	Time of holding	2-114
Educational qualifications of members	2-111	Uniform ratings and standards	2-115
Examination of applicants for license	2-106, 2-114—2-117	Written examinations required	2-115
Federal or District officers or employees, appointment authorized	2-106	Examiners, power to appoint, suspend, or remove	2-105
Number of members	2-106	Exemptions from operation of law	2-133
Petition for appointment, contents	2-111	Burden of proof	2-134
Preferences in appointment to board	2-111	Limitations and restrictions	2-134
Qualifications of members	2-106, 2-111	Practice of massage or dietetics	2-134
Reference of applicants for license to board	2-112	Practitioners from other states or countries and federal medical officers	2-133
Resolution for appointment, contents	2-111	Proof of right to exemption	2-133
Secretary	2-106	Registration of name of applicant	2-133
Term of office	2-106	Treatment of emergency cases	2-134
Educational standards	2-103	Use of hygienic methods	2-134
Power of commission to establish	2-103	X-ray laboratory technicians	2-134
Emergency cases, exemption from act	2-134	False impersonation of applicant for license prohibited	2-124
Enforcement of law	2-137	Falsely impersonating licensee under act	2-125
Enjoining unlawful practice	2-132	False swearing, perjury	2-128
Advancement on trial calendar and on appeal	2-132	Fees for licenses	2-119
Hearing and judgment	2-132	Basis of issuance reciprocity	2-119
Petition, parties plaintiff	2-132	Certification of application for license by reciprocity to other jurisdiction	2-119
Procedure	2-132	Deposited to credit of commission	2-135
Remedy additional to criminal prosecution	2-132	Exemption from license, registration fee	2-119
United States District Court, jurisdiction	2-132	Issuance of license on basis of examination	2-119
Examination as basis for license	2-119, 2-122	Issuance on basis of years of practice in District	2-119
Drugless healer	2-122	Licensees in medicine or surgery or midwifery under prior law, relicensing	2-120
Educational requirement	2-122	Paid to collector of taxes	2-135
Midwifery	2-122	Refunding in whole or in part, grounds	2-119
Osteopaths	2-122	Filing of false data prohibited	2-124
Physicians and surgeons	2-122	Forging or altering diploma or other evidence of graduation	2-126
Proof required of applicant	2-122	"Healing arts" defined	2-101
Examination of applicants for license	2-114—2-117		
Clinical and laboratory tests	2-117		
Collection and examination of papers	2-117		
Concealment of identity of examinee	2-116, 2-117		
Conducted in English language	2-115		
Determination of final standing of applicants	2-117		



HEALING ARTS PRACTICE ACT—Con.	Sec.	HEALING ARTS PRACTICE ACT—Con.	Sec.
Inspectors, power to appoint, suspend, or remove	2-105	Practicing in accordance with terms of license or registration required	2-102
Interne training, power to establish minimum standard	2-103	Practitioners from other states and countries, exemption	2-133
Issuance of license to practice	2-118	Practitioners residing in states bordering District, exemption from law	2-119
Issuing after examination	2-104	Reciprocity as basis for license to practice	
Issuing without examination, grounds	2-104	Application for license	2-119, 2-121
Licenses recorded	2-118	Failure to pass examination, issuance of license under reciprocity provision prohibited	2-121
Licensed practitioners from other states or countries, exemption	2-133	Issuance of license	2-121
Licensee allowing impersonation by another	2-125	Licensing without examination	2-121
License on years of practice	2-103, 2-120	Proof of qualifications	2-121
License required	2-102	Records and property of prior board, delivery to commission	2-136
Licenses to practice numbered consecutively	2-118	Refusal to license or register applicant	2-129
Licenses of different classes	2-118	Appeal to Court of Appeals	2-129
Licensing to practice after examination	2-119, 2-122	Disobedient witnesses, content	2-129
Educational requirements	2-122	Enforcing attendance of witnesses	2-129
Internship	2-122	Grounds	2-123, 2-129
Proof of qualification by applicant	2-122	Hearing, witnesses	2-129
Medical officers in federal service, exemption	2-133	Review by District Court of United States	2-129
Medicine and osteopathy, Board of Examiners	2-106	Swearing of witnesses at hearing	2-129
Allopathic members	2-109	Relicensing of licensees under prior law	2-120
Basic sciences	2-110	Application for license required	2-120
Certification of qualified applicants for license to commission	2-109	Chiropractors	2-120
Chairman	2-106	Contents of application	2-120
Educational qualifications of members	2-109	Drugless healers	2-120
Examination of applicants for license	2-109	Issuance of license	2-120
Federal or District officers or employees, appointment authorized	2-106	License without examination	2-120
Grading of examination papers	2-109	Midwives	2-120
Homeopathic members	2-109	Osteopaths	2-120
Number of members	2-106	Physicians and surgeons	2-120
Osteopathic members	2-109	Time limit for applying for license	2-120
Qualifications of members	2-106, 2-109	Repeal of contrary or inconsistent laws	2-140
Reference of applicants for license to board	2-106, 2-110	Revocation of license to practice	
Reports	2-106	Conviction of felony, appeal, effect	2-131
Secretary	2-106	Grounds, procedure	2-123
Term of office	2-106	Saving clause	2-140
Midwifery, Board of Examiners	2-106, 2-113	Superintendent of police, duty to enforce laws	2-137
Chairman	2-106	Suspension of license to practice	2-123
Examination of applicants for license	2-106, 2-114—2-117	Appeal to Court of Appeals	2-123
Federal or District officers or employees, appointment to board authorized	2-115	Conviction of felony, appeal, effect	2-131
Number of members	2-106	Misconduct or professional incapacity	2-123
Power to abolish board	2-113	Procedure	2-123
Qualifications of members	2-106, 2-113	Unfair rating of applicants for license prohibited	2-127
Reference of applicants for license to board	2-113		
Secretary of board	2-106		
Term of office of members	2-106		
Money remaining to credit of prior board, transfer to commission	2-136		
Name of act	2-139		
Naturopathy, Board of Examiners	2-106		
Examination of applicants for license	2-106, 2-114—2-117		
Observance of terms of license required	2-102		
Penalty for violating law	2-130		
Physicians and surgeons in federal service, exemption	2-119		

## HEALTH AND SAFETY

See BLINDNESS IN INFANTS; DENTISTRY; FIRE DEPARTMENT; GARBAGE; HEALTH OFFICER; INSANITARY BUILDINGS; NURSES; OPTOMETRY; PHYSICIANS AND SURGEONS; POLICE DEPARTMENT; PRIVIES; SEWERS; SMOKE PREVENTION; UNSAFE STRUCTURES	
Blindness in infants, prevention	6-201—6-204
Commissioners authorized to adopt regulations	6-114
Prevention and control of diseases	6-118
Commissioners of District, duties	4-119
Garbage, collection and disposal	6-501—6-511
Health officer, ex officio member Healing Art Licensure Commission	2-103



HEALTH AND SAFETY—Continued		Sec.	HEALTH OFFICER—Continued		Sec.
Insanitary buildings	5-601—5-615		Deaths, registration		6-102
Mattresses, regulation of manufacture, renovation, and sale	6-601—6-608		Ex officio member of Board of Podiatry Examiners		2-701
Ordinances, rules, and regulations of Board of Health legalized	6-111—6-113		Fees		6-103
Exceptions	6-111, 6-112		Amount		6-103
Given force and effect of Acts of Congress, exception	6-113		Collection and payment into treasury		6-103
Ordinances of 1875	6-111		Payable into treasury		47-126
Repeal by Commissioners authorized	6-114		Infants with inflamed eyes, duties		6-202
Schedule of specific ordinances	6-112		Interment of the dead, enforcement of regulations		6-102
Outside toilets, maintenance, restrictions	6-701—6-704		Investigation of suspected violations		6-607
Penalty for violating regulations for control of disease	6-119		Seizure and destruction of unlawful mattresses		6-608
Pound and stable, reservation number 290	8-137		Supervision by Commissioners		6-606
Publication of Code authorized	4-177		Licenses requiring approval		
Regulations for protection, power of Commissioners to adopt	1-226		Abattoirs		47-2316
Sanitary inspectors	6-104, 6-105		Slaughterhouses		47-2316
Appointment by Commissioners	6-104		Mattress law, enforcement		6-606, 6-607
Inspector of fish and other marine products, duties transferred	6-110		Member of Board for Condemnation of Insanitary Buildings		5-601
Nomination by health officer	6-104		Deputy officer acting in place of		5-602
Qualifications	6-104		Milk, cream, and ice cream supervision		33-301—33-322
Removal of subordinates by Commissioners	6-104		Permits regarding dead human bodies		27-118
Reports to health officer	6-105		Podiatry licenses registered with		2-706
Sewer and drainage connections	6-401—6-404		Powers and duties in general		6-101
Smoke prevention	6-801—6-804		Prophylactic against inflammation of eyes of new-born child		6-201
Tuberculosis Sanatoria	6-117		Duty of midwife to obtain from health officer		6-201
Direction and control by health department	6-117		Registration of cemetery superintendents		27-117
Unsafe structures	5-501—5-505		Reports to Commissioners		6-106
Volunteer medical services, acceptance	1-215 note		Sewer connections, certification of necessity		6-401
			Vital statistics regulations, enforcement		6-102
<b>HEALTH CERTIFICATE</b>			<b>HEATER METHOD</b>		
Cosmetologists	2-1307, 2-1313		Definition, resurfacing street		7-628
Registered barber	2-1104, 2-1107		Payment of costs, resurfacing street		7-628
Renewal of certificates	2-1109				
Registered barber apprentice	2-1105		<b>HEIGHT</b>		
<b>HEALTH INSURANCE</b>			Buildings		
See INSURANCE AND INSURANCE COMPANIES			Governed by width and character of street, basis of measurement		
<b>HEALTH OFFICER</b>			Maximum fixed by law		
See FOOD AND DRUGS			Zoning commission's power to regulate		
Adulteration laws, enforcement	33-104, 33-105, 33-108		Combustible or nonfireproof building, maximum height and number of stories		5-401, 5-402
Appointment	6-101		Fireproof construction of buildings, when required		5-403
Assistant health officer	6-109		Frame building used for human habitation		5-406
Acting health officer during absence or disability of health officer	6-109		Parapet, regulation		5-407
Required to be physician	6-109		Width and character of street as governing height of building		5-405
Birth reports filed with	6-303				
Acknowledgment of receipt	6-301		<b>HEIRS</b>		
Publication of abstracts and analysis of data	6-303		See DECEDENTS' ESTATES		
Right of inspection	6-303		Law of descents		
Chief inspector, acting as deputy prohibited	6-108		One who kills intestate		
Clerks	6-107, 6-108		One who kills testator		
Appointment, number	6-107		<b>HEROIN</b>		
Chief clerk acting as deputy prohibited	6-108		See NARCOTIC DRUGS		
Dead human bodies, cremation, containers for ashes	6-115		Exempted medical preparations		
			Included in term "opium"		
			Sale by manufacturer or wholesaler, written orders		



<b>HERRING</b>	Sec.	<b>HIGHWAYS—Continued</b>	Sec.
See <b>GAME AND FISH LAWS</b>		<b>Permanent Highway Plan—Continued</b>	
<b>HIGHWAY BRIDGE</b>		Beatty and Hawkins's Addition to George-	
Abutment and roadway maintained and con-		town, inclusion authorized	7-116
trolled by Commissioners	7-103	Binding effect on property-owners	7-109
Paving between tracks, payment of cost by		Conformity with street plan of city of	
street railways	7-507	Washington	7-108
Street railways' right to use	7-507	Eminent domain authorized, procedure,	
Tugboats and power boats, construction, ap-		law governing	7-201—7-221
proval by Secretary of War	7-509	Extension of system outside limits of city	
Tugboats passing under without use of draw	7-509	of Washington	7-108
Under control of Commissioners	7-507	Hearing on new plans	7-122
Use for highway traffic	7-507	Map	7-109
<b>HIGHWAY COMMISSION</b>		Naming of streets, avenues, and alleys	7-112
Abolished, powers and duties transferred to		New plans for various streets	7-122 note
National Capital Park and Planning Com-		New plans, preparation by Commissioners	
mission	8-101	and adoption authorized	7-122
<b>HIGHWAYS</b>		Notice given owners, hearing	7-115
See <b>EMINENT DOMAIN; STREETS AND OTHER</b>		Preparation in sections	7-109
<b>WAYS</b>		Recording with surveyor	7-109
Bituminous macadam, use in improving au-		Resubdivision of property affected pend-	
thorized	7-617	ing condemnation proceedings	7-119
Boundaries permanently marked	7-105	Submission to National Capital Park and	
Capitol grounds	9-106, 9-107	Planning Commission	7-109
Closing and readjusting, procedure	7-401—7-410	Surveys, right of entry	7-111
Closing of certain highways authorized		Use of property by owner until condemna-	
Apportionment of land among abutting		tion	7-114
owners	7-124	Roads outside city of Washington made public	
Assessment for taxation	7-124	highways	7-104
Plat, preparation and approval	7-124	Roadways in spaces and reservations, widen-	
Closing of various streets and highways by		ing	8-127
Commissioners authorized	7-123	Rock Creek Park	8-148
Consent of property-owners	7-123	Subdivisions outside city limits	7-125
Reversion of title to abutting property-		Approval of plat by Commissioners	7-125
owners	7-123	Recording of plat with surveyor	7-125
Commissioners of District, control over	7-102	Testing of materials in laboratory of depart-	
Cutting trenches or removing work and mate-		ment	1-814
rials, permit required	7-615	Use of motor fuel tax proceeds for	47-1901
Penalty for violating act	7-616	Widening of certain roads, use of land owned	
Eminent domain, land for highways	7-201—7-221	by United States authorized	7-126
Materials for making or repairing, condemna-		<b>HISTOLOGY</b>	
tion	7-332	Dentist, examination for license	2-308
Maximum width	7-108	<b>HOLDER</b>	
Milestones, removing, penalty	22-3106	Definition, Negotiable Instruments Law	28-101
Minimum width	7-108	<b>HOLDER FOR VALUE</b>	
Names		Definition	28-203
Powers of Commissioners	7-107	Lien held on instrument	28-204
Recording in office of surveyor	7-107	<b>HOLDER IN DUE COURSE</b>	
Roads outside city limits, power of Com-		See <b>NEGOTIABLE INSTRUMENTS</b>	
missioners to name	7-107	Conclusive presumption of delivery	28-117
Obstructing, penalty	22-3120, 22-3121	<b>HOLIDAYS</b>	
Fines collected in name of United States	22-3121	Laborers employed by District, leaves with	
Parks, traffic regulations, enforcement by		pay	1-314
director	8-109	Last day falling on holiday, Negotiable Instru-	
Parkway connecting Potomac, Zoological, and		ments Law	28-101
Rock Creek Park	8-158—8-160	Negotiable instruments falling due on, day	
Permanent Highway Plan	7-108, 7-109	payable	28-616
Abandonment of highways, maintenance		Per diem employees, leaves with pay	1-314
pending assessment of damages result-		Presentment of bill of exchange	28-922
ing	7-114	<b>HOME FOR THE AGED AND INFIRM</b>	
Abandonment of ways, reversion to abut-		See <b>CHARITABLE INSTITUTIONS</b>	
ting owners	7-118		
Adoption to existing subdivisions	7-109		
Authority vested in Commissioners	7-108		



HOME OWNERS' LOAN CORPORATION		Sec.	HOSPITALS AND ASYLUMS—Continued		Sec.
See BANKS AND OTHER FINANCIAL INSTITUTIONS			Hospital liens—Continued		
HOMES			Grounds		38-301
See ALLEY DWELLINGS			Hospital ledgers, examination		38-304
HOMESTEAD ASSOCIATIONS			Notice		38-302
See BANKS AND OTHER FINANCIAL INSTITUTIONS			Indigent insane, designation of hospitals for care of		3-110
HOMICIDE			Indigent poor, medical care and treatment, contracts with District		3-110
See MANSLAUGHTER; MURDER; NEGLIGENCE HOMICIDE			Infants, inflamed eyes, hospital care		6-202
HORNS			Inspections by health officers		32-302
Power to regulate and prohibit noises	1-224		Internship, minimum standards, power of commission to establish		2-103
HORSE RACES			Jury service, keepers, exemption		11-1420
Gambling on, penalty	22-1508		Liability of District for care and maintenance of patients limited,	3-110, 3-111	
HORTICULTURE			Mattresses, use of material from by renovator prohibited		6-602
See AGRICULTURE AND HORTICULTURE; INSECT PESTS; PLANTS			Nonfireproof buildings		
HOSPITALS AND ASYLUMS			Limitation on height		5-401
Children's Hospital, public works loan, tubercular children clinic	9-204, 9-208		Number of stories, maximum height		5-401
Children's Tuberculosis Sanatorium	32-312, 32-313		Penalties for violation of statute and regulations		32-303
Admission of pay patients	32-313		Private hospitals and asylums to be licensed		32-301
Construction and equipment authorized	32-312		Prosecutions in police court		32-305
Columbia Hospital for Women and Lying-in Asylum	32-314, 32-315		Providence Hospital		32-316
Repairs and improvements under direction of superintendent of United States Capitol building	32-314		Contagious disease patients referred by Commissioners of the District		32-316
Vacancies among trustees other than members of Congress	32-315		Regulations, enforcement by health officer		32-302
Commissioners of the District to make rules and regulations	32-304		Rules and regulations		32-304
Contagious diseases, hospitals for, limitation on erection	32-311		Saint Elizabeth's Hospital	32-401-32-407	
Dental internes	2-302		Admission of indigent insane of District		32-405
Freedmen's Hospital	32-316, 32-320		Admission of insane convicts		32-407
Admission of patients	32-318		Expenses of indigent insane admitted from District	32-401, 32-402	
Charges for treatment	32-318		"Indigent insane person" defined		32-405
Continuance under direction of Secretary of Interior	32-317		Payments for treatment to be credited to appropriations		32-403
Contract between Secretary of Interior and Board of Public Welfare	32-319		Private patients from District, admission and charges		32-406
Disposition of money collected	32-318		Reimbursement on expenses by District to be credited to it		32-404
Estimates for expenses	32-317		Transfers from District Training School		32-622
Unclaimed money of deceased patients, disposal	32-320		Smallpox hospitals, regulations		32-306
Gallinger Municipal Hospital	32-308, 32-309		Tuberculosis Hospital		32-310
Admission of pay patients	32-308, 32-309		Admission of pay patients		32-310
To contagious-disease ward	32-309		Control and management by Board of Public Welfare		3-106
To psychopathic ward	32-308		Public works loan for construction		9-204
Control and management by Board of Public Welfare	3-106		Tuberculosis Sanatoria		6-117
Public works loan for construction	9-204		Board of Commissioners, supervisory power		6-117
Garfield Memorial Hospital	32-316		Health department, direction and control of		6-117
Contagious disease patients referred by Commissioners of the District	32-316		Visitorial power of Commissioners of the District		32-1002
General provisions	32-301-32-320		Washington Asylum Hospital, services continued		32-307
Home for Aged and Infirm	32-1009		HOTELS AND LODGINGHOUSES		
Sale of surplus products, deposit of proceeds	32-1009		See APARTMENT HOUSES; FIRE ESCAPES AND SAFETY PROVISIONS		
Hospital liens	38-301-38-305		Defrauding, penalty		22-1301
Docket	38-305		Embezzlement of property of guest	22-1205, 22-1207	
Failure to pay, liability	38-303		Penalty		22-1207
			Fire escapes and safety provisions		5-301



HOTELS AND LODGINGHOUSES—Con.		Sec.	HOUSES OF PROSTITUTION—Continued		Sec.
Fireproof construction, when required		5-403	Nuisance—Continued		
Hotel			Costs in action to abate		22-2715
Definition	5-312, 47-2328		Declared such		22-2713
License, fee	47-2328		Delivery of premises, order for		22-2719
License, prerequisites	47-2302		Injunction	22-2714—22-2717	
Innkeeper			Order for abatement		22-2717
Defrauding, penalty	22-1301		Sale of property	22-2717, 22-2718	
Embezzlement of property of guest, punishment	22-1205, 22-1207		Tax for maintaining		22-2720
Inspection, fees		5-316	Witnesses, granting immunity to		22-2721
Liabilities		34-101, 34-102	Parent, guardian, consent to taking female for		22-2705
Baggage stolen from rooms	34-102		Placing female in	22-2705, 22-2706, 22-2708, 22-2710, 22-2711	
For goods in safe, limitation	34-101		Husband placing wife		22-2708
For money, jewelry prudently kept in rooms	34-101		Parent, guardian, consenting to		22-2705
Limitation by notice to keep doors locked	34-102		Receiving consideration for		22-2710
Limiting by notice of safe	34-101		Procuring female for	22-2705, 22-2710	
Wearing apparel	34-101		Prosecution of persons arrested		4-146
Lien on baggage, effects for amounts due	34-103		"Prostitution" defined		22-2701
Liens	34-103		Receiving consideration for furnishing, servicing		22-2712
Enforcement by bill in equity	34-105		Right of entry		4-145
Enforcement by sale	34-104		Running, penalty		22-2712
Lodginghouses			Searches and seizures	4-145, 4-146	
Definition	5-312, 47-2330		Destruction of property seized		4-146
License, fee	47-2302		Suspension of sentence of guilty person		22-2703
License, prerequisites	47-2302		HOUSING PROJECTS		
Notice regarding safe, limiting liability	34-101		See ALLEY DWELLINGS		
Notice to keep doors locked, limiting liability	34-102		Definition, Alley Dwelling Law		5-112
Providing safe for valuables	34-101		HOWARD UNIVERSITY		
Right to dispose of own refuse	6-507		Property exempted from taxation		47-811
HOURS OF LABOR			HUCKSTERS		
Public buildings and works	22-3407, 22-3408		Weighing and measuring devices, duty to have tested		10-103
HOUSEBREAKING			HUIDEKOPER PLACE		
Definition, penalty	22-1801		Whitehaven Parkway		8-117
Killing during and while armed, murder in first degree	22-2401		HUMAN BODIES		
HOUSE OF REPRESENTATIVES			See DEAD HUMAN BODIES		
Sergeant at Arms, Capitol Buildings and Grounds, powers	9-105		HUNTING		
HOUSES OF PROSTITUTION			See GAME AND FISH LAWS		
See ASSIGNATION; PROSTITUTION; LEWDNESS; PANDERING			HUSBAND AND WIFE		
Child, harboring as prostitute	22-2704		See DIVORCE; MARRIAGE; MARRIED WOMEN		
Children found in, commitment to charitable institution	32-209		Antenuptial debts, liability		30-210
Complaints, right of entry, searches and seizures	4-145		Common-law liability of husband for wife's debts continued		30-211
Debts contracted in, detention for	22-2709		Competency as witnesses		14-306
Destruction of property seized	4-146		Contracts of wife deemed made with reference to separate estate		30-209
Entry when closed by injunction	22-2717		Conveyance by husband to wife		30-205
Frequenter deemed vagrant	22-2702		Not notice of existence of husband's creditors		30-205
Husband placing wife in, penalty	22-2708		Rights of creditors		30-205
Inducing or compelling female to reside in	22-2705, 22-2706		Conveyance of separate property by wife		30-201
Inmate deemed vagrant	22-2702		Covenants running with land, power of married woman to execute		30-202
Jurisdiction of Police Court	11-604		Disabilities of married women under twenty-one	30-201, 30-203	
Keeping, penalty	22-2722		Equitable separate estates		30-206
Nuisance	22-2713—22-2721		Guardian for married woman under 21		30-203
Abatement of	22-2713—22-2719		Husband's liability for necessities		30-211
Bond for abatement	22-2719				



<b>HUSBAND AND WIFE—Continued</b>	Sec.	<b>IMPERSONATION</b>	Sec.
Insurance for benefit of creditor, free from other creditor's claim	30-213	See FALSE PERSONATION	
Insurance for benefit of wife, children, or dependent relative, free from creditor's claim	30-213	<b>IMPRISONMENT</b>	
Insurance on husband payable on death of wife to children, descendants, representatives	30-214	See PRISONS AND PRISONERS	
Insurance on husband's life, exemption from debts of husband	30-213	<b>IMPROVEMENTS</b>	
Prostitution, husband encouraging wife to live life of prostitute	22-2708	Recovery for in ejectment	16-519
Receipt for money given by wife, validity, exception	30-215	<b>INCAPACITY</b>	
Release of dower by joint or separate deed	30-216	As ground for annulment of marriage	16-403
Separate contracts of wife, exemption of husband from liability	30-208	<b>INCEST</b>	
Suits by or against wife authorized	30-208	Definition, penalty	22-1901
Torts committed by wife, husband's exemption from liability	30-208	<b>INCINERATORS</b>	
Trade or business, married woman's right to engage in	30-208	See GARBAGE	
Trust deed, wife empowered to execute	30-204	Garbage reduction plants	6-505—6-511
Trustee for separate property of wife unnecessary	30-204	<b>INCOME TAX</b>	
Wife's power to dispose of separate property	30-201	See TAXATION AND FISCAL AFFAIRS	
Wife's receipt of funds in fraud of husband's creditors, attachment or injunction	30-215	Accounting periods	47-1510
Wife's separate contracts, exemption of husband from liability	30-208	Calendar year	47-1510
Wife's separate property, freedom from liability for husband's debts	30-207	Period used for federal income tax return	47-1510
		Taxpayer's fiscal year	47-1510
<b>HYDRATED OXIDE OF ETHYL</b>		Additions for nonpayment	47-1540
Definition of "alcohol" includes	25-103	After extension period	47-1540
<b>HYDROCYANIC ACIDS</b>		Covering extension periods	47-1541
Poison, sale, restrictions	2-612	Deficiencies	47-1540
<b>HYGIENE</b>		Fiduciaries	47-1540
See DENTISTRY		General rule	47-1540
Use of hygienic methods, exemption from Healing Arts Practice Act	2-134	Additions in case of deficiency	47-1539
<b>HYOSCYAMUS</b>		All gross income during taxable year to be included, exception	47-1511
Poison, sale, restrictions	2-612	Application of law	47-1501
<b>ICE</b>		Assessor allocating income and deductions	47-1520
See SIDEWALKS; SNOW AND ICE		Businesses owned by same interests	47-1520
Sale by weight required	10-112	Organizations owned by same interests	47-1520
Scale for weighing, regulations concerning	10-112	Trades jointly owned by same interests	47-1520
Weight ascertained at time of delivery	10-112	"Assessor" defined	47-1543
<b>ICE CREAM</b>		Assessor to administer	47-1529
See DAIRIES AND DAIRY PRODUCTS; MILK AND MILK PRODUCTS		Duties	47-1529
Factory license	47-2327	Examination of books and witnesses	47-1529
Ice cream parlors, license	47-2327	Making returns where taxpayer fails	47-1529
Milk, cream, and ice cream, production and sale, regulatory law	33-301—33-322	Making return when taxpayer's is false	47-1529
Standard measures and their capacity	10-119	Statements and special returns	47-1529
<b>IDIOT</b>		Businesses owned by same interests	47-1520
Annulment of marriage	30-104	Allocation of income and deductions	47-1520
<b>ILLEGITIMATE CHILDREN</b>		Assessor to make allocations	47-1520
See DECEDENTS' ESTATES; LEGITIMACY		Blanks for returns, assessor to supply	47-1517
		Capital assets	47-1506
		Definition	47-1506
		Gains and losses in sales not to be computed	47-1506
		Closing agreements	47-1535, 47-1536
		Approval by Commissioners of the District	47-1535
		Authority of assessor to make	47-1535
		Concealment of assets, penalty	47-1536
		False statements, penalty	47-1536
		Finality, exception	47-1535
		Misuse of documents, penalty	47-1536
		Collection, as for personal property taxes	47-1527
		"Collector" defined	47-1543
		"Commissioners" defined	47-1543



INCOME TAX—Continued		Sec.	INCOME TAX—Continued		Sec.
Compromises			Definitions		47-1543
Authority to make		47-1536	"District" defined		47-1543
Concealment of assets, penalty		47-1536	"Dividend" defined		47-1543
False statements, penalty		47-1536	"Domestic" defined		47-1543
Misuse of documents, penalty		47-1536	Duty of assessor to obtain return from all tax-		
Penalties may be compromised		47-1536	payers liable		47-1517
"Corporation" defined		47-1543	Duty of taxpayer to make return		47-1517
Corporation returns		47-1516	Estates and trusts		47-1524
By receivers, trustees in bankruptcy, or			Application of tax		47-1524
assignees		47-1516	Computation of tax		47-1524
Contents		47-1516	Different taxable year		47-1524
Filing fee		47-1516	Income for benefit of grantor		47-1524
Credits against net income of individuals		47-1509	Income from intangibles held by trust		
Change of status, effect		47-1509	company or national bank		47-1524
Credit for dependents		47-1509	"In discretion of grantor" defined		47-1524
In return for fractional part of year		47-1509	Net income computation		47-1524
Periods		47-1512	Revocable trusts		47-1524
Personal exemptions		47-1509	Examination of books and witnesses		47-1529
Credits against net income, periods for			Compelling attendance by witnesses		47-1529
which taken		47-1512	Summoning witnesses		47-1529
Criminal penalties		47-1542	Exclusions from gross income, annuity bene-		
Death of taxpayer, gross income to death to			fits, exceptions		47-1504
be included		47-1511	Benefits under laws relating to veter-		
Deceased taxpayer, gross income to be in-			ans		47-1504
cluded in return for		47-1511	Compensation for injury or sickness		47-1504
Deductions from gross income		47-1505	Dividends from China Trade Act corpora-		
Allocation of deductions		47-1505	tions		47-1504
Bad debts		47-1505	Income exempted under treaties		47-1504
Charitable contributions, limitation		47-1505	Income of foreign governments		47-1504
Corporations to file total income to ob-			Interest on tax exempt securities		47-1504
tain		47-1505	Life insurance death benefits		47-1504
Depreciation		47-1505	Property acquired by bequest or devise		47-1504
Expenses of doing business		47-1505	Property acquired by inheritance		47-1504
Insurance premiums		47-1505	Rental value minister's dwelling-house		47-1504
Intercompany dividends		47-1505	Exemptions		
Interest paid or accrued on debts		47-1505	Banks		47-1502
Items of deduction enumerated		47-1505	Boards of trade		47-1502
Losses in trade or business		47-1505	Bonding companies		47-1502
Losses in transactions for profit		47-1505	Building and loan associations		47-1502
Periods for which taken		47-1512	Cemetery associations		45-1502
Rules and regulations of Commissioners			Certain not for profit corporations		47-1502
of the District		47-1505	Chambers of Commerce		47-1502
Taxes paid, exceptions		47-1505	Charitable institutions		47-1502
Wagering losses, limitation		47-1505	Churches		47-1502
Deductions not allowed in computing net in-			Citizens' associations		47-1502
come		47-1508	Community chest, fund, or foundation		47-1502
Amounts spent in restoring property		47-1508	Corporate instrumentalities of the		
Business life insurance premiums		47-1508	United States		47-1502
New buildings and value-increasing im-			Educational institutions		47-1502
provements		47-1508	Farmers' cooperative associations		47-1502
Payments to holder of life estate or ter-			Insurance companies		47-1502
minable interest		47-1508	Labor organizations		47-1502
Personal, living, or family expenses		47-1508	Literary associations		47-1502
Deficiencies		47-1530, 47-1531	Religious institutions		47-1502
Additions for nonpayment		47-1540	Scientific institutions		47-1502
Appealing assessments to Board of Tax			Social clubs		47-1502
Appeals		47-1531	Societies for prevention of cruelty to chil-		
Assessment		47-1531	dren or animals		47-1502
Definition		47-1530	Teachers' retirement fund associations		47-1502
Determination		47-1531	Trade associations		47-1502
Due to fraud, addition to tax		47-1539	Voluntary employees' beneficiary asso-		
Due to negligence, addition to tax		47-1539	ciations		47-1502
Interest upon		47-1538	Exemptions from gross income, property ac-		
Payment		47-1531	quired by gift		47-1504



INCOME TAX—Continued	Sec.	INCOME TAX—Continued	Sec.
Exemptions from taxation	47-1502	Negligent violations, penalty	47-1542
Extension of time for filing returns	47-1519	"Net income" defined	47-1503
Assessor may grant for good cause	47-1519	Nontaxable items	47-1504
Penalty for deferred filing	47-1519	Organizations owned by same interests	47-1520
Time limits on extension	47-1519	Allocation of income and deductions	47-1520
Extension of time for payment	47-1541	Assessor to make allocations	47-1520
Failure to file return, amount to be added	47-1537	"Paid or accrued" defined	47-1543
"Fiduciary" defined	47-1543	"Paid or incurred" defined	47-1543
Fiduciary returns	47-1523	"Partner" defined	47-1543
For estates	47-1523	"Partnership" defined	47-1543
For individuals	47-1523	Partnerships	47-1525
For trusts	47-1523	No tax on partnership as such	47-1525
Joint fiduciaries	47-1523	Partnership return required, contents	47-1525
Law applicable to fiduciaries	47-1523	Partners taxable separately	47-1525
"Fiscal year" defined	47-1543	Payment	47-1526
"Foreign" defined	47-1543	Extension of time	47-1526
Furnishing copies of returns	47-1521	Fractional part of cent	47-1526
On court order only where District inter-		Payable to collector of taxes	47-1526
ested	47-1521	Receipts	47-1526
Taxpayer's copy, fee	47-1521	Time for payment	47-1526
Gains and losses in sale of property	47-1506	Voluntary advance payment	47-1526
Computation when capital assets	47-1506	Periods for which deductions and credits	
Computation when not capital assets	47-1506	taken	47-1512
Gains or losses in exchange of property	47-1506, 47-1507	Periods in which items of gross income in-	
Computation at equivalent cash value	47-1507	cluded	47-1511
Computation when capital assets	47-1506	Personal debt	47-1527
Computation when not capital assets	47-1506	Personal exemptions	47-1509
Securities exchanged in reorganizations	47-1507	"Person" defined	47-1542, 47-1543
Gross income	47-1504	Persons required to make return	47-1515
Deductions from gross income	47-1505	Persons under disability, returns for	47-1515
Definition	47-1504	Preservation of returns by assessor	47-1522
Exclusions from gross income	47-1504	Publication of return statistics	47-1521
Of corporations	47-1504	Rate	47-1502
Of individuals	47-1504	Reciprocal exchange of information in re-	
Husband and wife, choice of return	47-1515	turns	47-1521
"Include" defined	47-1543	With States	47-1521
"Individual" defined	47-1543	With the United States	47-1521
Individual returns	47-1515	Refunds	47-1534
Information from Bureau of Internal Revenue	47-1528	Appealing disallowed claims to Board of	
Installment sellers	47-1513	Tax Appeals	47-1534
Interest on deficiencies	47-1538	Claims, verification, grounds and filing	47-1534
Inventories	47-1514	Limitation on amount	47-1534
Assessor may require	47-1514	Notice of disallowance of claim	47-1534
Basis of taking	47-1514	Time limitation	47-1534
Jeopardy assessments	47-1532	Return to be made without call	47-1517
Authority of assessor to make	47-1532	Sales on installment basis, amount return-	
Fund to stay collection	47-1532	able	47-1513
Payable on assessment	47-1532	Casual sale of personalty, price over	
Limitation on assessment and collection	47-1533	\$1,000	47-1513
Collection within three years of assess-		Change from accrual to installment basis	47-1513
ment	47-1533	Gain or loss on disposition of obligation	47-1513
Corporation income, 12-month rule	47-1533	Real property	47-1513
Failure to file return, no time limit	47-1533	Regular installment sellers	47-1513
False return, no time limit	47-1533	Rules and regulations of Commissioners	
General rule, two years	47-1533	of the District	47-1513
Income during administration of deced-		Secrecy of returns	47-1521
ent's estate, 12-month rule	47-1533	"Shareholder" defined	47-1543
Income in lifetime of decedent, 12-month		"Stock" defined	47-1543
rule	47-1533	"Taxable income" defined	47-1502
Omission of gross income, five-year rule	47-1533	Taxable year	47-1511
Waiver of assessment by agreement	47-1533	Definition	47-1543
Waiver of collection by agreement	47-1533	Tax is personal debt	47-1527
		"Taxpayer" defined	47-1543



**INCOME TAX—Continued**

	Sec.
Tax rates	47-1502
Corporations	47-1502
Individuals	47-1502
Time for filing returns	47-1518
Extension	47-1519
On calendar year basis	47-1518
On fiscal year basis	47-1518
“Trade or business” defined	47-1543
Trades owned by same interests	47-1520
Allocation of income and deductions	47-1520
Assessor to make allocations	47-1520
Trusts	47-1524
“United States” defined	47-1543
Violating secrecy of returns, penalty	47-1521
Violation of Income Tax Law	47-1542
Negligent violation, penalty	47-1542
“Person” defined	47-1542
Wilful violation, penalty	47-1542

**INCORPORATED BANKS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS**

Excise tax	47-1701
------------	---------

**INCORPORATED SAVINGS BANKS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS**

Excise tax	47-1703
------------	---------

**INCORPORATION**See **CORPORATIONS IN GENERAL; CORPORATIONS FOR PROFIT; CORPORATIONS NOT FOR PROFIT; INSURANCE AND INSURANCE COMPANIES****INCUMBRANCES**

Preference not affected by assignments for benefit of creditors	28-2606
---	---------

**INDECENT EXPOSURE**

Penalty	22-1112
---------	---------

**INDECENT PUBLICATIONS**

Defined	22-2001
Sale, offer, gift, penalty	22-2001

**INDEMNITY COMPANY**See **BANKS AND OTHER FINANCIAL INSTITUTIONS****INDETERMINATE SENTENCE AND PAROLE**See **CRIMINAL PROCEDURE**

Board of Indeterminate Sentence and Parole	24-201
Creation	24-201
Duties generally	24-201
Employees, appointment	24-202
Executive secretary	24-202
Expenses	24-201
Rules and regulation	24-201
Federal Board of Parole, powers over prisoners convicted in District extended	24-209
Indeterminate sentences authorized	24-203
Parole	24-204
Authorization	24-204
Conditions	24-204
Crimes other than felonies	24-208
Custody of paroled prisoners	24-204
Felonies committed prior to June 6, 1940	24-203 note
New parole after revocation	24-206
Revocation hearing	24-206
Violation, effect	24-205

**INDETERMINATE SENTENCE AND PAROLE—Continued**

	Sec.
Parole officers	24-202
Appointment and duties	24-202
Salaries and expenses	24-202
Prior acts repealed	24-207
Prior parole board, powers to be transferred	24-208
Prisoners under indeterminate sentences may be paroled	24-203
Prisoners under life sentence may be paroled	24-203

**INDEXES**

Surveyor of records	1-607
---------------------	-------

**INDICTMENTS**See **CRIMINAL PROCEDURE****INDIGENTS**See **PAUPERS; POOR PERSONS**

Burial ground	8-141
---------------	-------

**INDORSEMENTS**See **NEGOTIABLE INSTRUMENTS**

Definition, Negotiable Instruments Law	28-101
Indorsing payments on obligations, effect of statute of frauds	12-305
Negotiable warehouse receipts	28-2002
Transferee's right to compel indorsement	28-2007
Nonnegotiable warehouse receipts, no additional rights transferred	28-2003

**INDUSTRIAL HOME SCHOOL FOR COLORED CHILDREN**

Moneys received to be deposited to credit of District	32-504
---	--------

**INDUSTRIAL HOME SCHOOLS**See **PRISONS AND PRISONERS**

Board of Public Welfare	32-501
Control and management by	32-501
To purchase supplies	32-501
To receive all moneys	32-501
Board of Trustees abolished, powers transferred to Board of Public Welfare	32-502
Control and management	32-501
Exchange of part of site for part of Naval Observatory grounds	32-503

**INDUSTRIAL LIFE INSURANCE**See **INSURANCE AND INSURANCE COMPANIES**

Industrial policies	35-1001—35-1005
---------------------	-----------------

**INFANTS**See **BLINDNESS IN INFANTS; CHILDREN; JUVENILE OFFENDERS; MINORS; PROCESS****INFRINGEMENTS**

Patents, actions for, jurisdiction	11-307
------------------------------------	--------

**INHABITED ALLEY**

Definition, Alley Dwelling Law	5-109
--------------------------------	-------

**INHERITANCE TAXES**See **ESTATE TAX; TAXATION AND FISCAL AFFAIRS**

Administration	47-1618
Adopted children, transfers to, rate	47-1601
Appraisal by assessor	47-1602
Appraisal by Probate Court	47-1602
Appraisal deemed true value	47-1603



INHERITANCE TAXES—Continued		Sec.	INHERITANCE TAXES—Continued		Sec.
Arrears		47-1619	Monthly report of register of wills to assessor		47-1617
Assessor			Payment by personal representative		47-1604
Compounding and settling tax		47-1627	Property not under control of personal rep- resentative		47-1606
Definition		47-1628	Report to be made by person entitled		47-1606
To determine tax	47-1618, 47-1626		Time for payment of tax		47-1606
Associations, transfers to, rate		47-1601	Property taxable		47-1601
Beneficiary dying within 6 months		47-1601	Property transfers exempted from tax		47-1601
Beneficiary failing to pay, sale of part of share		47-1605	For charitable purpose in District		47-1601
Brothers and sisters, transfers to, rate		47-1601	For educational purposes in the District		47-1601
Bureau of Internal Revenue to supply infor- mation		47-1625	For public or municipal purpose		47-1601
Collateral relatives except brothers and sis- ters, and other persons, transfers to, rate		47-1601	For religious purposes in the District		47-1601
Collected like personal property taxes		47-1619	Release of lien		47-1623
Collection from beneficiary		47-1605	Report of personal representative		47-1604
"Collector of taxes" defined		47-1628	Contents		47-1604
"Commissioners" defined		47-1628	Filing with assessor, time limit		47-1604
Commissioners of the District to supervise enforcement		47-1618	"Residence" defined		47-1628
Compelling attendance of witnesses		47-1618	"Resident" defined		47-1628
Compounding and settling, assessor's au- thority		47-1627	Return not filed, assessor determining tax		47-1626
Corporations, transfers to, rate		47-1601	Rules and regulations		47-1618
Definitions		47-1628	Situs of intangibles		47-1629
Discharge of fiduciaries from liability		47-1601	Tax based on market value at death		47-1602
"District" defined		47-1628	Tax is lien for 10 years		47-1603
Doctrine of equitable conversion not invoc- able		47-1601	Tax rates		47-1601
Donee for life or years		47-1607	Time for payment		47-1604
Computation of tax		47-1607	Transfer in contemplation of death, when pre- sumed		47-1601
Time for payment of tax		47-1607	Transfers except to decedent's fiduciary		47-1624
Donee of future interest		47-1607	Liability of transferor not reporting		47-1624
Computation of tax		47-1607	Transferor's duty to make prior report		47-1624
Interest contingent, time for payment		47-1607	Trustees, discharge from liability		47-1601
Interest vested, time for payment		47-1607	Wilful failure to make return, penalty		47-1622
Duty of personal representative to collect		47-1605	Wilful failure to pay, penalty		47-1622
Enforcement by mandamus		47-1620	Wilful failure to supply data, penalty		47-1622
Examining books and witnesses		47-1618	INJUNCTIONS		
Executors and administrators, discharge from liability		47-1601	Assessment and collection of taxes not to be enjoined		47-2410
Extinguishment and reattachment of lien on personal property		47-1603	Boilers, unauthorized use		1-713
Failure to file return, liability		47-1621	Buildings erected or altered in violation of law		5-408
False or fraudulent return, liability		47-1621	Violation of injunction, penalty		5-408
Firms, transfers to, rate		47-1601	Buildings, erection, construction, reconstruc- tion, or alteration		5-422
Future estates		47-1607	Corporations		
General power of appointment, effect		47-1601	Barring transfer of assets		29-727
Husband or wife, transfers to, rate		47-1601	Restraint from ultra vires acts		29-725
Imposition of tax		47-1601	District Court empowered to issue		11-315
On estates of decedents		47-1601	Enforcement of decrees in equity		11-326
On gifts		47-1601	Enjoining disposition of property in divorce actions		16-410
On shares of beneficiaries		47-1601	Fire, casualty, marine insurance, receivership actions		35-1308
"Include" defined		47-1628	Fire escapes and safety provisions, failure to construct		5-311
Institutions, transfers to, rate		47-1601	Fraternal benefit associations, refusal to make report		35-914
Interest added when not paid on time		47-1619	Healing arts, unlawful practice		2-132
Liability of personal representative's bond, limitation		47-1616	Parties plaintiff		2-132
Lien, release of		47-1623	Life insurance company, restraining trans- actions		35-419
Life estates		47-1607	Prostitution, houses of, abatement by as nui- sance		22-2714—22-2717
Lineal ancestors, transfers to, sale		47-1601	Taxes, collection not to be enjoined		47-2410
Lineal descendants, transfers to, rate		47-1601	Unregistered medical and dental colleges		31-904
Market value, based upon		47-1602			
"Metropolitan police department" defined		47-1628			



## INJURIES TO PROPERTY

See TRESPASS

Criminal offenses, 22-3101—22-3122

## INLAND BILLS OF EXCHANGE

See NEGOTIABLE INSTRUMENTS

## IN LOCUS PARENTI

Service of process where infant is defendant 13-105

## INNKEEPERS

See HOTELS AND LODGINGHOUSES

## INNOCENT PURCHASER

See FRAUDULENT CONVEYANCES

## INQUEST

See CORONER

## INSANE CRIMINALS

Certification to Secretary of Interior 24-301

Persons acquitted on sole ground of insanity 24-301

Persons determined insane before criminal trial 24-301

Commitment when insanity develops during sentence 24-302

Confinement in hospital for insane 24-301

Expenses of confinement 24-301

Restoration to sanity 24-303

Right to appeal, bill of exceptions 24-301

## INSANE PERSONS

Arrest, not in public places 21-327

Arrest without warrant when found in public places 21-326

Certificate of physician 21-330

Commission on Mental Health 21-308

Authority 21-308

Composition 21-308

Recommendations 21-314

Salaries 21-309

Commitment after inquisition 21-315

Committee 21-301

Bonds and undertakings, in District Court 28-2403

Compensation 21-301

Limit to appointment 21-302

Confinement 21-317

Custody of harmless insane 21-317

Discharge of patients on bond 21-332

Discharge of those temporarily committed 21-329

Estates 21-301

Accounting 21-301

Power of court 21-303

Sale or mortgage for maintenance 21-304

Sales to be ratified by court 21-305

Examination 21-311

False affidavit or certificate 21-331

Feeble-minded children, care and maintenance, duties of Board of Public Welfare 3-114

Forms furnished 21-323

Guardianship 21-115

Ancillary guardian, property in District 21-115

Hearings to restore status of parolees 21-320

Suits by ancillary guardian 21-116

Indigent insane, hospitalization 3-110

## INSANE PERSONS—Continued

"Insane person" includes every idiot, non compos and lunatic 49-207

Insanitary buildings, ownerships, condemnation, appointment of guardian 5-609

Issuance of attachment 21-311

Jury in lunacy inquisitions 21-313

Leases 45-924—45-930

Liability of residents for maintenance and treatment 21-318

Lunacy proceedings 21-307

Appointment of committee or trustee 21-307

Inquest application 21-310

Jury 21-307

Petition of Commissioners of District 21-307

Non compos mentis trustee, mortgagee, conveying 45-620

Nonresident insane, return to place of residence 3-110

Not to be confined in jail 21-333

Penalty for false petition, affidavit 21-324

Police taking into custody, duties of police surgeons 4-124

Prior remedies preserved 21-325

Procedure, without jury, in lunacy inquisitions 21-314

Property-owners, charge for care 21-319

Property subject to encumbrances 21-202

Property subject to executing contract 21-203

Report 21-312

Sale of property held jointly or in common 21-213

Sales to under Uniform Sales Act 28-1102

Service by publication 13-110

Service of process 13-107

Temporary commitment 21-329

Temporary detention when insanity alleged 21-328

Transfer of nonresidents 21-317

Undertakings for lunacy inquisitions 21-322

Witness fees in lunacy inquisitions 21-321

## INSANITARY BUILDINGS

See UNSAFE STRUCTURES

Appropriations for enforcement of act 5-615

Board for Condemnation 5-601—5-603

Commissioners to furnish assistance 5-601

Creation 5-601

Deputy health officer acting as member 5-602

Inspection of buildings 5-603

Interest in property affected prohibited 5-602

Interference with prohibited 5-611

Investigation of buildings 5-603

Jurisdiction and authority 5-601

Members of Board 5-601

Powers and duties 5-601, 5-603

Principal assistant inspector of building acting as member 5-602

Quorum 5-602

Report to Commissioners of District 5-601

Right of entry 5-601

Changes, cancelation of order of condemnation 5-606

Condemnation of buildings 5-601, 5-603

Authority of board 5-601

Copy of order affixed to building 5-603

Destroying, obliterating, or removing prohibited 5-612



INSANITARY BUILDINGS—Continued		Sec.	INSECT PESTS—Continued		Sec.
Condemnation of buildings—Continued			Right of entry of employees of Plant Quar-		
Majority of members of board present			antine and Control Administration		6-904
required		5-602	Secretary of Agriculture, powers and duties		6-904
Notice to vacate		5-605	Shipment of plants into or out of District,		
Order of condemnation		5-603	regulation and control		6-904
Service of order on owner or part owner		5-603			
Demolition		5-607	INSPECTION		
Commissioners demolishing at public ex-			See BOILER INSPECTION; ELECTRICAL WIRING;		
pense, assessment of cost against			INSPECTORS; PLUMBING		
premises		5-607	Boiler Inspection Act		1-701—1-718
Conditions irremedial		5-607	Electrical wiring		1-719—1-723
Cost and expenses, assessment against			Fire escapes and safety provisions of build-		
property		5-614	ings		5-316
Costs of repair or change excessive		5-607	Plumbing		1-724—1-727
Owner or part owner failing to demolish,					
misdemeanor		5-607	INSPECTORS		
Removal of building under order of court		5-614	See BUILDING INSPECTOR; HEALTH AND SAFETY;		
Notice to show cause		5-603	POLICE DEPARTMENT		
Time allowed		5-603	Asphalt and cement, rendering similar services		
Occupation after notice prohibited	5-603, 5-605		for others prohibited		1-307
Extension of time, repairs or changes			Assistant inspector of buildings, inspection of		
being made		5-606	elevators and fire escapes		1-729
Thirty days' notice given		6-605	Board of Barber Examiners authorized to		
Owner or part owner under legal disability		5-609	appoint		2-1112
Appointment of guardian, jurisdiction		5-609	Boiler inspector		
Report of fact to corporation counsel		5-609	Appointment by Commissioners		1-703
Penalty for violating law concerning		5-613	Bond		1-704
Preventing or refusing to permit inspection			Oath of office		1-704
or work prohibited		5-611	Right of entry		1-711
Property in litigation			Boilers		1-703, 1-704
Powers of court		5-608	Enforcement of Boiler Inspection Act		1-703
Procedure, duty of corporation counsel		5-608	Service created		1-703
Repairs, cancelation of order of condemnation		5-606	Chief inspector of health department, acting		
Service of notices required by act, method		5-610	as deputy health officer prohibited		6-108
Vacation or modification of condemnation			Dairies and dairy farms, right to act as live-		
order		5-614	stock inspector		6-116
Decree directing compliance with order			Electrical wiring		1-720, 1-721
of board		5-614	Assistant inspectors		1-721
Decree requiring repairing of building		5-614	Electrical engineer chief inspector		1-720
Fees of jurors		5-614	False personation as		22-1305
Inspection of premises and hearing of			Fire Department		4-404
evidence by jury		5-614	Salary		4-405
Jury of three appointed, qualifications		5-614	Fish and marine products, duties transferred		6-110
Precedence over other places		5-614	Plumbing inspector		1-724
Removal of building under order of court		5-614	Principal assistant inspector of buildings, dis-		
Report of jury to court		5-614	charge of duties of inspector		1-728
United States District Court vested with			Sanitary inspectors		6-104, 6-105
jurisdiction		5-614	Appointment by Commissioners		6-104
Verdict of jury, special findings		5-614	Drainage and ventilation member		6-104
			Inspector of fish and other marine prod-		
			ucts, duties transferred		6-110
			Nomination by health officer		6-104
			Physician members		6-104
			Removal of subordinates by Commission-		
			ers		6-104
			Reports to health officer		6-105
			Weights and measures		10-103—10-106
INSANITY			INSTALMENT PAYMENTS		
See INSANE CRIMINALS; INSANE PERSONS			Alleys or minor streets, condemnation pro-		
As ground for annulment		16-403	ceedings, assessments		7-321
INSECTICIDES			Streets and other public improvements, per-		
Sale by other than pharmacist		2-601	mit system of making		7-608
INSECT PESTS			Streets, opening, widening, or extending, as-		
Common carriers, liability limited		6-905	essment of benefits		7-211
Control law		6-904			
Control measures		6-904			
Destruction of infected plants		6-904			
Police court, power to issue warrants for					
search and seizure		6-904			
Powers of Secretary of Agriculture		6-904			



INSTALMENTS		Sec.	INSURANCE AND INSURANCE COM- PANIES		Sec.
Income tax, instalment selling		47-1513	Accident and health		35-712, 35-1332
Notes payable in instalments, negotiability		28-103	Standard policy provisions		35-712
INSTITUTIONS			Taxation		47-1801-47-1808
Inheritance tax rates on transfers to		47-1601	Agents, representing unlicensed company, penalty		35-201
INSTITUTIONS OF LEARNING			Alien companies		
See EDUCATION			Annual reports		35-104
Annual report		29-411	Documents to be filed with superintendent		35-601
Content		29-411	Information to be furnished superin- tendent		35-601
Filing with recorder of deeds		29-411	Policy provisions required in home coun- try may be retained in policies sold in District		35-709
Application of funds		29-405	Prerequisites to authority		35-601
Bequests for particular purpose		29-406	Taxation		47-1801-47-1808
Certificate of incorporation		29-401	Trustees of funds in United States		35-602
Contents		29-401	Annuities, when exempted from gross income tax		47-1504
Branches of learning to be taught		29-401	Benefit orders and associations		
Name		29-401	Application, copy to accompany policy		35-203
Number, designation of professor- ships		29-401	Statements in application as defense		35-203
Trustees, managers or directors		29-401	Boilers covered by insurance, certificate of in- spection		1-707
Recording		29-401	Report of inspection to District inspector		1-707
Degrees, conferring		29-415	Casualty companies, taxation		47-1801-47-1808
Application for license to confer		29-416	Casualty described		35-1314
License from Board of Education		29-415	Compensation		35-205
Prerequisites, to license		29-415	Regulations		35-205
Revocation of license to confer		29-417	Review of superintendent's decisions		35-205
Devises for particular purpose		29-406	Companies holding capital stock of life com- panies, examination		35-418
Dissolution		29-701-29-729	Companies organizing as life companies, ex- amination		35-418
Donations for particular purpose		29-406	Department of Insurance		35-101-35-108
Foreign institutions		29-418	Commissioners of the District to super- vise		35-101
General provisions		29-101-29-105	Deputy superintendents		35-401
Implying connection with United States or District prohibited		29-418	Employees, compensation		35-401
Incorporation		29-402	Establishment		35-101
Certificate		29-401	Records are public records		35-1304
Fee		29-414	Seal		35-401
Officers		29-409	Superintendent		35-101-35-108
Authority to appoint or replace		29-409	Appointment		35-101
Bond of treasurer		29-410	Duties		35-102
Penalties for violating chapter		29-419	District property, insurance		1-816
Powers		29-402, 29-403	Documents under seal of department		35-401
Process against, service		29-412	Domestic companies, taxation		47-1801-47-1808
Property to be held solely for purposes of education		29-404	Domestic life companies		35-501-35-540
Quo warranto		29-413	Acquisition of own capital stock, when unlawful		35-540
Real property		29-407	Agreements to withhold securities from sale prohibited		35-535
Limitation on amount held		29-407	Amending articles to increase capital stock, increase to be paid within year		35-510
Reversion on failure to sell excess		29-408	Articles of incorporation		35-501-35-503
Sale of excess within 15 years		29-407	Amending to increase capital stock		35-510
Tax exemption			Amendment, procedure		35-509
Income tax		47-1502	Amendment to decrease capital stock		35-511
Property		47-802	Contents		35-501
Treasurer's bond		29-410	Filing with superintendent		35-502
INSTRUMENTS			Notice of intention to file		35-502
Definition, Negotiable Instrument Law		28-101			
False certification of recordable instruments, penalty		22-1308			
Fees and charges, permit of fraternal benefit association to do business		35-906			
Fidelity and surety companies, taxation		47-1801-47-1808			
Preservation by surveyor of District		1-606			



INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.	INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.
Domestic life companies—Continued		Domestic life companies—Continued	
Articles of incorporation—Continued		Incorporators' bond	35-502
Recording	35-503	Investment of funds, approved, securi- ties	35-535
Submission to corporation counsel	35-503	Keeping books, records, accounts, vouch- ers	35-539
By-laws, contents	35-522	Mutual companies	35-516
Calls on subscribers to stock	35-513	Borrowing to pay organization ex- penses	35-534
Capital stock book	35-515	Classification of members	35-533
Contents	35-515	Classification of risks	35-533
Contents as evidence	35-515	Corporations, associations may hold policies	35-516
Failure to exhibit, penalty	35-515	Directors' qualifications	35-521
Failure to make entry, penalty	35-515	Guaranty fund, approval by super- intendent	35-534
Opening for inspection	35-515	Maximum and contingent premiums	35-532
Capital-stock company	35-508	Providing for creation of surplus	35-533
Paid-up stock, amount required	35-508	Providing for payment of dividends	35-533
Surplus paid-up, amount required	35-508	Representatives of corporations, as- sociations, estates	35-516
Capitol stock to be paid in before doing business	35-513	Requirement before transacting busi- ness	35-517
Certificate of authority	35-503	Notice of stock call	35-513
Companies to which Life Insurance Act applies	35-520	By publication	35-513
Company in course of organization	35-503—35-507	Personal	35-513
Cessation of corporate powers, liqui- dation	35-507	Not to subscribe in underwriting of securi- ties	35-535
Corporate powers	35-503	Officers	35-529, 35-530
Examination	35-506	Not to be pecuniarily interested in transactions	35-530
Extension of time for completion	35-507	Selection	35-529
Investment of subscribed funds	35-505	Pledgee of stock, liability	35-512
Limitation of organizational expense	35-505	Pledger of stock, rights and liability	35-512
Not to issue policies	35-503	Policy provisions required at point of issu- ance may be inserted	35-709
Permit	35-503	Publication of notice to form and of filing of articles	35-502
Revocation of permit	35-506	Real estate holdings	35-536
Revocation of solicitor's authority	35-506	Purposes	35-536
Solicitors' authority to be filed with superintendent	35-504	Sale of excess holdings, time limit	35-536
Subscriptions to capital stock	35-505	Reincorporation of existing corporations	35-518
Conversion of stock company into mutual	35-519	Reinsurance of risks	35-537
Companies which may convert	35-519	Salary limitation	35-527
Plan for acquisition of stock, re- quirements	35-519	Stock-book record, effect of	35-514
Directors	35-520	Stock companies, directors' qualifications	35-521
Conduct of elections	35-523	Stockholders' liability	35-512
Cumulative voting in elections	35-524	Superintendent as attorney for service of process	35-423
Election	35-521	Transfers of capital stock	35-514
Liabilities	35-526	Voting trust agreements	35-531
Limitation on proxies for election of directors	35-521	Declared unlawful	35-531
Not to be pecuniarily interested in transactions	35-530	Definition	35-531
Objecting to dividends, method and effect	35-526	Voting under group policies	35-525
Qualifications of mutual company directors	35-521	Vouchers for disbursements	35-538
Qualifications of stock company di- rectors	35-521	Domestic marine companies	35-1101, 35-1133
Dividends to policy holders, limitations	35-528	Fire companies	
Dividends to stockholders, limitations	35-528	Capital impaired, suspension and revoca- tion of license	35-201
Documents to be filed with superintend- ent	35-502	May become perpetual	29-237
Examinations, not longer than three years apart	35-418	Taxation	47-1801—47-1808
Failure to pay stock call, forfeiture	35-513	To maintain reinsurance reserves	35-201
Fiduciaries as stockholders, liability	35-512		



INSURANCE AND INSURANCE COM- Sec.	INSURANCE AND INSURANCE COM- Sec.
PANIES—Continued	PANIES—Continued
Fire companies—Continued	Fire, marine, and casualty insurance—Con.
Writing marine insurance	Certificate of authority—Continued
35-1101—35-1133, 35-1301—35-1350	Issuance by superintendents 35-1305
Fire, marine, and casualty insurance	Notice before revocation or suspension 35-1306
35-1301—35-1350	Refusal to issue 35-1305
Accident and health policies 35-1332	Revocation, grounds 35-1306
"Admitted assets" defined 35-1303	Suspension, grounds 35-1306
Agents 35-1334	Transacting business without, prohibited 35-1305
Alien companies 35-1323	Classification of insurance 35-1314
Admission 35-1323	Casualty described 35-1314
Application for certificate of authority 35-1325	Fire and marine described 35-1314
Certificate of authority 35-1323	"Commissioners" defined 35-1303
Definition 35-1303	Commissions to unlicensed persons prohibited 35-1335
Examination in foreign country, superintendent may accept 35-1313	"Company" defined 35-1303
Requirements for admission 35-1326	Constitutionality clause 35-1350
To appoint superintendent as attorney for service of process 35-1327	Court proceedings 35-1349
Alien Lloyd's 35-1323	"Department" defined 35-1303
Admission 35-1323	Discrimination prohibited 35-1333
Certificate of authority 35-1323	"District" defined 35-1302
Requirements for admission 35-1324	Domestic companies 35-1318—35-1322
Alien mutuals	Definition 35-1303
Certificate of authority 35-1323	Exclusive agency contracts, approval of superintendent required 35-1322
Minimum surplus 35-1316	Formation 35-1318
Alien reciprocals 35-1323	Investments, permitted 35-1321
Certificate of authority 35-1323	Mutuals borrowing to defray organization expense 35-1320
Minimum surplus 35-1316	Real-estate holdings 35-1319
Alien stock companies 35-1323	Realty, excess to be sold 35-1319
Admission 35-1323	Domestic mutuals
Certificate of authority 35-1323	Formation 35-1318
Annual statement	May borrow to defray organization expense 35-1320
Contents 35-1311	Minimum surplus 35-1316
Publication of summary at discretion of superintendent 35-1311	Prerequisites to transacting business 35-1305
Time for filing, extension 35-1311	Domestic reciprocals
Verification 35-1311	Formation 35-1318
Appeals from superintendent 35-1348	Minimum surplus 35-1316
Application of Fire and Casualty Act 35-1302	Domestic stock companies, formation 35-1318
"Authorized company" defined 35-1303	Examination 35-1313
Brokers 35-1334	Expense 35-1313
Application for license 35-1336	Production of records 35-1313
Bond 35-1336	Exemptions from licenses 35-1342
Definition 35-1303	False entries in records, penalty 35-1313
Effective date of license 35-1337	False statements in reports, penalty 35-1312
Examination for license 35-1336	Fidelity insurance excepted 35-1302
License fees 35-1345	Filing lists of agents 35-1334
Renewal of license 35-1339	"Fire and marine insurance" defined 35-1314
Representing unauthorized companies, exception 35-1343	Foreign companies 35-1323
Revocation and suspension of license 35-1340	Admission 35-1323
Special license to deal with unauthorized companies 35-1344	Application for certificate of authority 35-1325
Temporary transfer of license 35-1338	Appointment of superintendent as attorney for service of process 35-423
"Casualty insurance" defined 35-1314	Certificate of authority 35-1323
Certificate of authority 35-1305, 35-1306	Definition 35-1303
Grounds for suspension without notice 35-1306	Examination in state, superintendent may accept 35-1313
Hearing before revocation or suspension 35-1306	Requirements for admission 35-1326
Investigation before issuance 35-1305	



INSURANCE AND INSURANCE COM- Sec.		INSURANCE AND INSURANCE COM- Sec.	
PANIES—Continued		PANIES—Continued	
Fire, marine, and casualty insurance—Con.		Fire, marine, and casualty insurance—Con.	
Foreign Lloyd's	35-1323	Policies	35-1331
Admission	35-1323	Accident and health policies	35-1332
Certificate of authority	35-1323	Definition	35-1303
Requirements for admission	35-1324	Discrimination prohibited	35-1333
Foreign mutuals	35-1323	Filing with superintendent	35-1331
Certificate of authority	35-1323	Superintendent's power to dis- prove	35-1331
Minimum surplus	35-1316	To be executed by licensed and au- thorized agents	35-1334
Foreign reciprocals	35-1323	To contain all agreements	35-1334
Certificate of authority	35-1323	"Policy writing agent" defined	35-1303
Minimum surplus	35-1316	Prosecutions	35-1346
Foreign stock companies	35-1323	Immunity of witnesses	35-1346
Admission	35-1323	Penalties	35-1347
Certificate of authority	35-1323	Production of papers	35-1346
Formation	35-1318	Rebates prohibited	35-1334
Articles of incorporation	35-1318	Receivership	35-1308
Certificate of authority	35-1318	Grounds	35-1308
Information to be filed with super- intendent	35-1318	Liquidation by superintendent	35-1308
"Impairment of capital or surplus" de- fined	35-1310	Superintendent applying for	35-1308
Injunction in receivership actions	35-1308	Termination	35-1308
"Insolvency" defined	35-1309	"Reciprocal" defined	35-1303
"Liabilities" defined	35-1303	Reciprocals, name, requirements	35-1328
Licenses	35-1334—35-1345	Representing unauthorized companies, penalty	35-1343
Application	35-1336	Reserves, computation	35-1330
Effective date	35-1337	Rules and regulations	35-1304
Examination for	35-1336	"Salaried company employee" defined	35-1303
Exemptions from	35-1342	Service of process on unauthorized com- pany	35-1327
Fees	35-1345	Short title of law applicable	35-1301
Renewal	35-1339	"Soliciting agent" defined	35-1303
Revocation and suspension	35-1340	Special license to deal with unauthorized companies	35-1344
Temporary transfer	35-1338	Stock companies	
Life companies excepted	35-1302	Minimum capital and surplus	35-1316
Limitation of risks	35-1315	Minimum surplus	35-1316
Mutuals and reciprocals	35-1315	"Superintendent" defined	35-1303
Other than mutuals and reciprocals	35-1315	Superintendent's power to disapprove	35-1331
Provision inapplicable to compensa- tion, employers' liability, marine or inland marine risks	35-1315	Surety contracts excepted	35-1302
Reinsured risks not included in de- termining	35-1315	"Surplus" defined	35-1303
Lloyds, minimum surplus not increased	35-1317	Surplus, minimum requirements	35-1316
Minimum capital not applicable to prior authorized companies	35-1317	Taxes, report and payment upon ceasing business	35-1307
Minimum surplus	35-1316	Title companies excepted	35-1302
Alien mutuals	35-1316	To be executed by licensed and authorized agents	35-1334
Alien reciprocals	35-1316	To contain all agreements	35-1334
Domestic mutuals	35-1316	"Unauthorized company" defined	35-1303
Domestic reciprocals	35-1316	Unauthorized solicitations	35-1341
Foreign mutuals	35-1316	Fire-marine companies	35-1101—35-1133
Foreign reciprocals	35-1316	Fire, stock and marine companies, alien mu- tuals	35-1323
Not applicable to preexisting com- panies	35-1317	Foreign companies	35-102
Stock companies	35-1316	Appointment of resident attorney for pur- poses of service of process	35-102
Mutuals		Process against, service on superin- tendent	35-102
Name, requirements	35-1328	Taxation	47-1801—47-1808
Premiums, maximum and contingent	35-1329	Foreign life companies	
"Officer" defined	35-1303	Documents to be filed with superintend- ent	35-601
Penalties	35-1347		
Pension plans excepted	35-1302		
"Person" defined	35-1303		



INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.	INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.
Foreign life companies—Continued		Fraternal benefit associations—Continued	
Information to be furnished superintendent	35-601	Profit associations exempted	35-916
Policy provisions required in home state may be retained in policies sold in District	35-709	Refusal to make reports	35-914
Prerequisites to authority	35-601	Effect	35-914
Foreign marine companies	35-1105	Injunction	35-914
Fraternal benefit associations	35-901—35-928	Reincorporation of existing associations	35-908
Acting without authority	35-915	Reserves	35-901
Alien associations	35-903	Separation of insurance and fraternal activities	35-922
Annual reports	35-904	Certificate of separation	35-923, 35-924
Contents	35-904	Continuance of fraternal activities	35-925
Filing with superintendent	35-904	Contracts not impaired	35-927
Application of funds	35-901	Directors of insurance activities	35-925
Associations not issuing benefit certificates exempted	35-916	Division of activities and property	35-925
Becoming mutual life insurance companies	35-925	Insurance activities to be continued as mutual legal reserve company	35-925
Benefits exempt from attachment	35-911	Laws applicable	35-928
Certificate of declaration	35-907	Original corporation not dissolved	35-926
Contents	35-907	Taxation	47-1801—47-1808
Recording	35-907	To whom benefits may be paid	35-901
Contract invalid if beneficiary is to pay assessments or dues	35-910	"Transacting business" defined	35-915
Corporate powers	35-907	Trustees, managers or directors	35-907
Definition	35-901	Health, accident, and life companies	35-202
"Doing business" defined	35-915	Amount of policies, limitation	35-202
Exemption from other insurance laws	35-901	Appeal to Commissioners of the District	35-202
Exemption of societies	35-916	Assets and capital stock required	35-202
Exemptions from general insurance laws	35-916	Benefits exempted from income tax	47-1504
Existing associations	35-902	Definition	35-202
Foreign associations	35-903	Examination by superintendent	35-202
Fraudulent representations regarding membership	35-913	Fraternal beneficial associations exempted	35-202
Incorporation of subordinate bodies	35-909	Reports to superintendent	35-202
Injunction for refusal to make reports	35-914	Taxation	35-202
Penalty for violation of injunction	35-914	Husband and wife, insurance on husband's life, proceeds, exemption from husband's debts	30-212—30-214
Superintendent to give notice	35-914	Income tax, when exempted	47-1502
Insurance and annuities on lives of children	35-918	Industrial insurance agents, licensing	35-1202
Insurance division becoming mutual life insurance company	35-922—35-928	Industrial life insurance	35-1001—35-1005
Juvenile fraternal insurance	35-918—35-921	Assignment of policies	35-1004
Contributions, computation	35-919	Beneficiaries	35-1005
Enforcement of contribution payments	35-921	Conditions of policies	35-1001
Issuance of certificates	35-918	Good faith of insured a material element	35-1002
Reserves	35-920	Incontestability of policies	35-1003
Meetings	35-912	Unsound health as defense	35-1002
Nonresident associations	35-903	Validity of policies	35-1002
Appointment of superintendent as attorney for service of process	35-905	Valuation of industrial policies	35-701
Conditions precedent to doing business in District	35-903	Insurance agents, representing unlicensed company, penalty	35-201
Right of superintendent to examine	35-903	Insurance agents, except life	35-1201, 35-1202
Not to use name of previously existing association	35-917	Employing solicitors	35-1202
Organization	35-907	Fraternal agents excepted	35-1202
Certificate of declaration	35-907	Penalty for acting without license	35-1201
Procedure	35-907	Solicitors' licenses	35-1202
Perjury in death claims	35-913	To secure license	35-1201
Permit to do business in District, fee	35-906	Insurance brokers, except life	35-1201
		Insurance companies, generally	35-102
		Annual reports	35-103
		Contents	35-103
		Failure to file and publish, license to be revoked	35-103



INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.
Insurance companies, generally—Continued	
Annual reports—Continued	
Filing with superintendent	35-103
Publication	35-103
Annual statement of business done in Dis- trict	35-105
Commissions to unlicensed agents prohib- ited	35-1201
Declaration of assets	35-108
Doing business after revocation of license, penalty	35-201
Doing business without license, penalty	35-201
Domestic corporation to have principal office in District	35-204
Prerequisites to doing business in District	35-102
Reincorporation under state laws	35-204
Removal of principal office, books from District, penalty	35-204
Solicitors' licenses	35-1202
Taxation	47-1801—47-1808
Annual rate	35-105
To file incorporation papers with superin- tendent	35-102
Insurance solicitors, except life	35-1202
Juvenile Fraternal Act	35-918—35-921
Life	35-301—35-803
"Agent" defined	35-302
"Alien company" defined	35-302
Annual valuation of policies	35-701
Annuities and endowments, standard pro- visions	35-705
Applications, false statements, effect	35-414, 35-719
Beneficiaries, rights against insureds' creditors	35-716
Beneficiaries when minor over 15 is pur- chaser	35-430
"Broker" defined	35-302
Certificate of authority	35-404
"Commissioners" defined	35-302
"Company" defined	35-302
Definitions	35-302
"Department" defined	35-302
Disability insurance, exemption from exe- cution	35-717
"District" defined	35-302
"Domestic company" defined	35-302
Extension of time for premium payment	35-706
False statements in reports, penalty	35-408
Fees and charges	35-402
Agent's license	35-402
Broker's license	35-402
Certificates of authority for com- panies	35-402
Filing articles of incorporation	35-402
Filing deed of settlement	35-402
General agent's license	35-402
Payable to collector	35-402
Refund of excess payments	35-402
Solicitor's license	35-402
"Foreign company" defined	35-302
"General agent" defined	35-302

INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.
Life—Continued	
Group life insurance	35-710, 35-711
Definition	35-710
Standard policy provisions	35-711
Industrial life insurance	35-1001—35-1005
Definition	35-302
"Liabilities" defined	35-302
Minors over 15 may contract for	35-430
"Net premium receipts" defined	35-302
Oath to false statement in report is perjury	35-408
Penalty for violation of act	35-801
"Person" defined	35-302
Physicians, false statements regarding applications	35-719
Prohibited policy provisions	35-704
Prosecutions	35-801, 35-802
Immunity of witnesses	35-802
Penalties	35-801
Right of minor over 15 to surrender and discharge policies	35-430
Rights of creditors of insured	35-716
Short title of law	35-301
"Solicitor" defined	35-302
Standard policy provisions	35-703
Stock and insurance operations not to be mixed	35-713
"Superintendent" defined	35-302
"Surplus" defined	35-302
Life agents	
Appeal from license suspension or revoca- tion	35-427
From District Court to Court of Ap- peals	35-427
To District Court	35-427
Appeal from refusal to issue license	35-427
Application for license, contents	35-425
Embezzlement of premiums received	35-429
False statements regarding applications	35-719
Forbidden to misrepresent policies	35-714
Inducing lapsation of policies prohibited	35-714
Licenses	35-425—35-427
Grounds for suspension and revoca- tion	35-426
Hearings for suspension or revoca- tion	35-426
Notice of hearing for suspension or revocation	35-426
Revocation	35-426
Suspension	35-426
Licenses of general agents	35-425
Licenses of solicitors	35-425
Not to use stock as inducement to in- sure	35-713
Penalty for violating licensing provision	35-426
Placing risks with other companies	35-425
Switching prohibited	35-714
Life brokers	35-426—35-429
Appeal from refusal to issue license	35-427
Appeal from suspension or revocation of license	35-426
Application for license, contents	35-428
Embezzlement of premiums received	35-429



INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.	INSURANCE AND INSURANCE COM- PANIES—Continued	Sec.
Life brokers—Continued		Life companies—Continued	
Examination for license	35-428	Domestic companies—Continued	
False statements regarding applications	35-719	Examination at least every three years	35-418
Licenses	35-428	Examination	35-418
Penalty for violating licensing provisions	35-428	Expense	35-418
Suspension or revocation of license	35-426	Hearing on report	35-418
Life companies	35-301—35-803	Publication of report	35-418
Accident and health insurance	35-712	Report, contents, verification	35-418
Standard policy provisions	35-712	Excepted from Fire and Casualty Act	35-1302
Actual premium less than net premium, effect	35-721	Extension of time for premium payment	35-706
Advertisements	35-409, 35-410	Failure to appoint superintendent as attorney for service of process, penalty	35-423
Contents	35-410	Foreign companies	35-601
Deceptive statements prohibited	35-409	Appointment of superintendent as attorney for service of process	35-423
Penalties	35-410	General agents	35-425
Agents	35-425	License	35-425
Licenses	35-425	Group life insurance	35-710, 35-711
Placing risks with other companies	35-425	Definition	35-710
Alien companies	35-601, 35-602	Standard policy provisions	35-711
Advertisements, contents	35-410	Holding policy proceeds in trust	35-720
Appointment of superintendent as attorney for service of process	35-423	Inducing lapsation of policies prohibited	35-714
Contents of annual statement	35-407	Law applicable	35-301
Annual statement	35-407	Liquidation by superintendent	35-419
Filing with superintendent	35-407	Misrepresentation concerning policies prohibited	35-714
Verification	35-407	Mutual companies, formed from insurance division of fraternal benefit associations	35-922—35-928
Annuities and endowments, standard provisions	35-705	Notice of nonconformity of policies, review	35-708
Application, copy to accompany policy	35-203	Notifying superintendent on termination of connection of general agent, agent, or solicitor	35-425
Assessment companies prohibited	35-431	Persons exempted from agents' license requirement	35-425
Capital impaired, suspension and revocation of license	35-201	Policy forms to be filed with superintendent	35-708
Certificate of authority		Policy loans, addition of unpaid interest	35-707
Contents	35-404	Political contributions	35-424
Effect	35-404	Immunity of witnesses	35-424
Grounds for revocation	35-405	Penalty	35-424
Notice of proposed revocation	35-405	Prohibition	35-424
Revocation	35-405	Soliciting	35-424
Suspension without notice	35-405	Premium loans, addition of unpaid interest	35-707
Transacting business without prohibited	35-404	Prohibited policy provisions	35-704
Companies selling in District only by mail, appointment of superintendent as attorney for service of process	35-423	Promises of profit as inducements to insure	35-713
Contracts varying policy terms prohibited	35-715	Rebates prohibited	35-715
Deceptive statements prohibited	35-409	Reinsurance by superintendent	35-421
Defaming, penalty	35-411	Rights of creditors of insured	35-716
Deposits, general	35-415—35-417	Separation of participating and nonparticipating business	35-702
Amount	35-415	Solicitors	35-425
Collection of income	35-416	Licenses	35-425
Custody	35-416	Standard policy provisions	35-703
Decline in value of securities	35-416	Policies exempted	35-703
Deposits outside District	35-415	Policies required to contain	35-703
Required securities	35-416	Statements in application as defense	35-203
Substitution of securities	35-416	Stock as inducement to insure forbidden	35-713
Transfer to reinsuring company	35-417	Superintendent as receiver reinsuring	35-421
Withdrawal, notice, examination, bond	35-417		
Discrimination between policyholders of same class prohibited	35-715		
Domestic companies	35-501—35-540		
Appointment of superintendent as attorney for service of process	35-423		



INSURANCE AND INSURANCE COM- Sec.	INSURANCE AND INSURANCE COM- Sec.
PANIES—Continued	PANIES—Continued
Life companies—Continued	Marine—Continued
Superintendent taking possession 35-419	"District" defined 35-1101
Application for order to show cause 35-419	"Domestic company" defined 35-1101
Conditions precedent 35-419	Immunity of witnesses 35-1129
Grounds 35-419	"Insurance company" defined 35-1101
Hearing on rule to show cause 35-419	Licensing brokers to deal with unlicensed insurers 35-1124
Injunction to restrain transactions 35-419	"Marine insurance company" defined 35-1101
Liquidation 35-419	Penalty for violating provisions 35-1128
Procedure 35-419	Production of incriminating evidence 35-1129
Restoration to officers 35-419	"Superintendent" defined 35-1101
Superintendent made receiver 35-419	Superintendent's powers 35-1101
Superintendent to furnish annual report forms 35-406	Superintendent to have special clerks 35-1130
Switching prohibited 35-714	Unauthorized insurance prohibited 35-1123
Taxation 47-1801—47-1808	Marine companies 35-1101—35-1133, 35-1301—35-1350
Refund of excess payments of taxes 35-402	Capital stock requirements 35-1103
To maintain reinsurance reserves 35-201	Classified records to be kept 35-1127
Unlawful inducements to purchase insurance 35-713	Companies exclusively writing in foreign countries 35-1122
Validity of process served on superintendent 35-423	Computation of earned premiums 35-1108
Valuation of assets 35-422	Definition 35-1101
Discretion of superintendent, limitation 35-422	Domestic companies
Rule 35-422	Definition 35-1101
Valuation of policies 35-701	Establishing foreign connections 35-1121
Legal standard of valuation 35-701	Investment of assets 35-1118
Superintendent to value annually 35-701	Merger 35-1120
When deemed insolvent 35-420	Realty holdings 35-1119
Life Insurance Act	Sale of excess realty 35-1119
Immunity of witnesses in prosecutions 35-802	Domestic mutual companies 35-1104, 35-1305, 35-1316
Penalties for violation 35-801	Advance premiums required 35-1104
Savings clause on constitutionality 35-803	Surplus required 35-1104
Life policies 35-701—35-721	Domestic stock companies 35-1103
False statements regarding applications 35-719	Failure to report for taxation or to pay license fee 35-1115
Forms to be filed with superintendent 35-708	Foreign companies 35-1105, 35-1323—35-1326
Group policies, exemption from execution 35-718	Investments 35-1105
Group policy, standard provisions 35-711	Requirements before doing business in District 35-1115
Inducing lapsation prohibited 35-714	Kinds of insurance to be written 35-1103
Industrial insurance policies 35-1001—35-1005	Law applicable 35-1102, 35-1304
Misrepresentations concerning, prohibited 35-714	Not exempt from Federal income taxes 35-1117
Notice of nonconformity, review 35-708	Notification of amount of taxes 35-1112
Prohibited provisions 35-704	Power of superintendent 35-1102, 35-1304
Rebates prohibited 35-715	Reinsurance companies 35-1103
Rights of beneficiaries against insureds' creditors 35-716	Reinsuring risks 35-1106
Rights of creditors of insureds 35-716	Report for computation of taxes 35-1112
Standard provisions 35-703	Report upon cessation of marine insurance business 35-1114
Switching prohibited 35-714	Separate accounts for each kind of insurance 35-1103
Lloyd's, taxation 47-1801—47-1808	Separate reserves for each kind of insurance 35-1103
Marine 35-1101—35-1133, 35-1301—35-1350	Statement of taxes, mailing 35-1109
Brokers dealing with unlicensed insurers 35-1123—35-1126, 35-1334—35-1345	Statements for taxation purposes 35-1109
Bond 35-1126	Superintendent computing taxes 35-1109
Failure to obtain license, penalty 35-1123	Syndicate B exempt from taxes and fees 35-1116
Licensing 35-1124	Taxation 35-1108, 47-1801—47-1808
Office and records to be maintained 35-1125	Taxation in lieu of license fees 35-1113
Brokers licensed to deal with unlicensed insurers 35-1125	Taxes on income from reserves 35-1110
"Company" defined 35-1101	Taxes on income from stock and surplus 35-1111
Definition 35-1101	Unearned premium reserve 35-1107



# INSURANCE AND INSURANCE COM- Sec. PANIES—Continued

Marine insurance	
Constitutionality clause	35-1131
Right to amend or repeal reserved	35-1132
Wagering policies illegal	35-1133
Mutual companies, taxation	47-1801—47-1808
Organizations exempted from Fraternal Bene- fit Associations Law	35-916
Premiums deductible in income tax returns	47-1505
Reciprocal companies, taxation	47-1801—47-1808
Recovery of penalty for doing business with- out license	35-201
Stock companies, taxation	47-1801—47-1808
Superintendent of insurance	35-101—35-108
Annual reports to be bound	35-107
Annual report to commissioners, contents	35-401
Annual valuation of life policies	35-701
Appeals from, on suspension or revoca- tion of life agent's license	35-427
Appeals from, time limit	35-432
Appointment	35-101
Appointment as attorney for service of process	35-423
As attorney for service of process on non- resident fraternal benefit associations	35-905
Attending national conventions	35-401
Discretion in evaluating assets of life company	35-422
Duties	35-101
Annual report to Commissioners of the District	35-106
Execution of insurance laws	35-102
Inquiries regarding companies' capi- tal and assets	35-108
Keeping copies of articles of incorpo- ration	35-102
Keeping copies of charters	35-102
Keeping copies of declarations of or- ganization	35-102
Providing annual report forms	35-103
Employees for liquidating life companies	35-419
Enforcement of orders through corpora- tion counsel	35-413
Examination of life companies	35-418
Examining domestic life companies at least every three years	35-418
Failure to obey subpoenas issued by	35-412
Furnishing annual report forms to life companies	35-406
Holds office at pleasure of Board of Com- missioners	35-401
Issuing certificates of authority to life companies	35-404
Not to be interested in insurance com- pany	35-401
Oath	35-401
Power over marine insurance companies	35-1102
Power to examine companies to discover impairment or insolvency	35-201
Power to issue subpoenas in examining life companies	35-411
Records are public records	35-401
Revocation of fire company license due to impaired capital	35-201

# INSURANCE AND INSURANCE COM- Sec. PANIES—Continued

Superintendent of insurance—Continued	
Revocation of life company license due to impaired capital	35-201
Rules and regulations, authority	35-102
Rules and regulations under Fire and Casualty Act	35-1304
Suits to recover penalty for failure to keep stock book of domestic life companies open	35-515
Suspension of fire company license due to impaired capital	35-201
Taking possession of life companies	35-419
To mail process served on to life com- pany	35-423
To report life companies taken over in re- port to Commissioners	35-419
Visiting state insurance departments	35-401
Title companies excepted from Fire and Cas- ualty Act	35-1302
Title guaranty companies, taxation	47-1801—47-1808
Workmen's compensation benefits exempted from income tax	47-1504
INTANGIBLE PERSONAL PROPERTY	
Situs under inheritance and estate tax laws	47-1629
INTELLIGENCE OFFICE KEEPERS	
Police Department, supervisory powers	4-147, 4-148, 4-150
INTENT TO DEFRAUD	
See FRAUD; FRAUDULENT CONVEYANCES	
INTEREST AND USURY	
Alley-dwelling improvement loan	5-103
Interest as element of damage	28-2708
Judgments for breach of contract to bear in- terest from date only	28-2708
Judgments for tort damage to bear interest from date only	28-2708
Judgments on contracts bearing higher than District rate, but lawful where made	28-2709
Judgments, when interest on principal shall be included	28-2707
Municipal Court judgments	11-724
Public contracts, sum retained out of final payment	1-807
Public Works Administration loan to Dis- trict	9-213, 9-214
Rate of interest	28-2701
Express contracts	28-2702
In absence of agreement	28-2701
Judgments against District	28-2701
Judgments and decrees	28-2701
Street-improvement assessment	7-608, 7-630
Streets and other ways, opening, widening, or extending, assessments, deferred payment	7-211
Usury	28-2703
Actions to recover usury paid	28-2704
Definition	28-2703
Effect	28-2703
Forfeiture of all interests	28-2703
Indorsee of negotiable instrument	28-2705
Parties may be made to testify regarding	28-2706



<b>INTEREST AND USURY—Continued</b>		Sec.	<b>JEFFERSON STREET</b>	Sec.
<b>Usury—Continued</b>			Abandonment in part	7-123 note
Payments to be credited to principal	28-2705		<b>JEWELRY</b>	
Small loan licensees exempt	28-2703		Auctioneers, Police Department, supervisory powers	4-147, 4-148, 4-150
<b>INTERLOCUTORY ORDERS AND DECREES</b>			<b>JOHN PHILIP SOUSA BRIDGE</b>	
Enforcement	11-326, 11-327		Pennsylvania Avenue and Anacostia River	7-506
<b>INTERNES</b>			<b>JOINDER OF COUNTS</b>	
Application to practice healing arts	2-122		See <b>PLEADINGS</b>	
Dental students in hospitals	2-302		<b>JOINDER OF PARTIES</b>	
Minimum training standards, power to establish	2-103		See <b>PARTIES; PLEADINGS</b>	
<b>INTERPLEADER</b>			<b>JOINT ACCOUNTS</b>	
See <b>PLEADINGS</b>			See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>	
Applicable where	13-217		<b>JOINT COMMITTEE ON PRINTING</b>	
Payment into court	13-217		Directing printing, binding and distribution of Code	49-109
Surety on contractor's bond paying money into court	1-804		<b>JOINT CONTRACTS</b>	
Third party to be made defendant	13-217		Death after commencement of action	16-903
Warehouse receipts, adverse claimants to goods	28-1910		Death of joint contractor, effect	16-902
<b>INTERPRETATION OF INSTRUMENTS</b>			Deemed joint and several	16-901
Real property conveyances	45-201—45-205		Definition	16-901
<b>INTERROGATORIES</b>			Proof of joint liability not necessary	16-905
Attachment and garnishment	16-303		Service on part, remainder may be sued separately	16-903
<b>INTERSTATE COMMERCE</b>			<b>JOINT TENANTS</b>	
Federal laws applicable to District, reference	pp. 679, 680		Action by or against for an accounting	16-101
<b>INTERSTATE COMMERCE COMMISSION</b>			<b>JOINT TRAFFIC BOARD</b>	
Carriers using facilities of Philadelphia, Baltimore, and Washington Railroad Company, fixing compensation	7-1223		Creation and duties	40-603
Powers withdrawn, vested in Public Utilities Commission	43-207		Violation of orders, penalty	43-907
<b>INTERVENERS</b>			<b>JOINTURE</b>	
Contractor's bond, actions on	1-804		See <b>DECEDENTS' ESTATES</b>	
<b>INTOXICATED PERSONS</b>			<b>JUDGES</b>	
Public places, being in, penalty	25-128		See <b>COURT OF APPEALS</b>	
Sales of alcoholic beverages to	25-131		Appointment of Police Court judges	11-601
Vehicles, operation of	25-127		District Court, powers in general	11-309
<b>INVENTORY</b>			Juvenile Court	11-920
Decedents' estates	18-401		Municipal Court	11-701
<b>INVESTIGATIONS</b>			Qualifications	11-701
In Juvenile Court	11-908		Municipal judges, charges against, hearing by general term of United States District Court	11-312
Municipal matters by Commissioners	1-237		Police Court	11-601
Law made applicable	1-237		Removal of Police Court judges	11-601
Oaths, power to administer	1-237		Small Claims and Conciliation Branch, Municipal Court	11-803
<b>INVESTMENT OF FUNDS</b>			United States District Court, habeas corpus, power to issue writ	11-315
Probate Court powers over	11-513		<b>JUDGMENTS AND DECREES</b>	
<b>ISLAND</b>			See <b>EMINENT DOMAIN</b>	
See <b>THEODORE ROOSEVELT ISLAND</b>			Actions on account, judgment in	16-106
<b>ISSUE</b>			Adoption proceedings	16-203
Definition, Negotiable Instruments Law	28-101		Amendment to pleadings	13-305
<b>JAILS</b>			Attachment and garnishment, levy on in	16-313
See <b>PRISONS AND PRISONERS</b>			Condemnation of attached property	16-320
Officers and employees, corrupt conduct, penalty	22-2602		Confirming sales, decrees registered in land records	15-109
			As notice	15-109
			Conveyances	15-109



JUDGMENTS AND DECREES—Continued		Sec.
Conveyance, decree for, effect as conveyance	15-110	
Dating, effect	15-104	
Demurrer, judgment on, pleading	13-206	
Divorce decree, effective date	16-421	
Ejectment, judgment in	16-516	
Enforcement by Court of Equity	11-326	
Execution	15-201	
Expiration	15-102	
Final judgment on partial admission of claim	13-216	
Final, Juvenile Court	11-938	
Foreign judgments, limitation of actions	12-203	
Interest on judgments where contract made outside District bears high rate of interest, legal where made	28-2709	
Interest on principal debt, when included	28-2707	
Interest rate	28-2701	
Judgment docket	15-104	
Contents	15-105	
District Court clerk to keep	15-104	
Judgments not docketed	15-106	
Juvenile Court	11-915, 11-916	
Liens	15-103	
Expiration	15-103	
Extent	15-103	
Final judgments	15-103	
Inferior to subsequent purchase-money mortgages	15-108	
Municipal Court judgments, when docketed with District Court clerk	15-103	
Recognizances in District Court, forfeited	15-103	
Recognizances in Police Court, docketed with District Court clerk	15-103	
Unconditional final decrees	15-103	
Limitations	15-101	
Extension by scire facias	15-107	
Mechanics' liens	38-111, 38-120—38-122	
Money judgment or decree, assignment	28-2501	
Municipal Court	11-718	
Satisfaction	11-742	
Stay of execution	11-748	
Payment stays execution	15-111	
Police Court, exceptions to finality	11-619	
Probate Court, admission of will to probate, decree for	19-308	
Enforcement by	11-516	
Plenary proceedings	11-510	
Quieting title obtained by adverse possession	16-1501	
Reference of questions of law and fact	16-1708	
Replevin	16-1812	
Set-off	16-1909	
Small Claims and Conciliation Branch, Municipal Court	11-811	
Enforcement	11-819	
Instalment payment	11-811	
Judgments by default	11-805	
Special terms of United States District Court	11-313	
Suffered with intent to defraud creditors	12-401	
Voluntary dissolution of corporations	29-705	
Wills, admitting to probate, admissibility as evidence	11-519	
Decree for	11-519	

JUDICIAL NOTICE		Sec.
Seal of Commission on Licensure to Practice the Healing Art		2-103
JUDICIARY		
See COURTS		
JUDICIARY SQUARE		
See COURT OF APPEALS		
Heat furnished from Central Heating Plant, terms and conditions		9-103
Public works loan for construction of building		9-204
JUNK		
Dealers, Commissioners' power to provide for inspection		1-224
Yards, abatement as nuisance		5-504
JURIES AND JURY COMMISSION		
Array, challenge of, civil cases, right preserved		11-319
Criminal offenses		
Collusion in drawing		22-1414
Jury box, tampering with		22-1414
Eminent domain, land for streets	7-205, 7-206	
Appointment from names drawn		7-205
Compensation of jurors		7-213
Drawing of names		7-205
Hearing of evidence		7-206
New jury on vacation of verdict		7-209
Oath of jurors		7-205
Objections to jurors		7-206
Vacancy in jury, power to fill		7-206
Verdict, preparation and return, contents		7-206
Viewing of premises		7-206
Eminent domain proceedings, alleys or minor streets, opening, widening, or straightening		7-315
Examination on voir dire, civil cases		11-319
Fees		
Alleys or minor streets, condemnation proceedings		7-322
Eminent domain proceedings, alleys or minor streets, condemnation proceedings		7-318
Filling vacancies on jury		11-1412
Grand jury	11-1406, 11-1408	
Additional, impaneling		11-1408
Selection of foreman		11-1406
Term of service		11-1406
Impaneling juries		11-1407
Grand juries, District Court		11-1407
Juvenile Court	11-936, 11-937, 11-1407	
Petit juries, District Court		11-1407
Police Court		11-1407
Procedure		11-1407
Vacancies, substitutions		11-1409
Insanitary buildings, condemnation proceedings		5-614
Jurors		
District of Columbia employees		11-1421
Service in State and United States courts, salaries not to be diminished		11-1421
Service in State and United States courts, time not to be deducted from leaves of absence		11-1421



JURIES AND JURY COMMISSION—Con.		Sec.	JURISDICTION—Continued		Sec.
Jurors—Continued			District Court of United States for District of		
District of Columbia employees—Con.			Columbia		
Service in State courts, compensation			11-305, 11-306		
to be credited against salary			11-324		
Service in United States courts, not			16-416		
to receive compensation for			Retention of		
11-1422			16-413		
Excused from further service			To award property		
11-1410			16-409		
Excusing for cause			Eminent domain proceedings		
11-1419			11-324		
Exemption from service			Equity Court term		
11-1420			11-325		
Fees and costs			Felonies of children over 16		
11-1512			11-914		
Geographical selection			Judges of United States District Court in		
11-1402			general		
In Municipal Court			11-309		
11-715			Juvenile Court		
Petit, term of service			11-907		
11-1405			Municipal Court		
Qualifications			11-703		
11-1417			Small Claims and Conciliation Branch		
Qualified government employees			11-804		
11-1420			Notaries public		
Not to be paid			1-503, 1-510		
11-1420			Patent law, infringement of patents		
Salaries not to be diminished			11-307		
11-1420			Police Court		
Service not to be deducted from			11-602		
leaves of absence			Probate Court term		
11-1420			11-501, 11-503		
Women as			Retention of		
11-1418			Divorce proceedings		
Jury box			16-413		
11-1403, 11-1404, 11-1410, 11-1411			Juvenile Court		
Custody by District Court clerk			11-907		
11-1404			Small Claims and Conciliation Branch,		
Disposition after drawings			Municipal Court		
11-1410			11-804		
Number of names for drawing			JURY COMMISSIONERS		
11-1411			See JURIES AND JURY COMMISSION		
Placing names in			JUVENILE COURT		
11-1403			Abused children, commitment		
Sealing			32-209		
11-1404			Adult		
Tampering with, penalty			Jury trial, when		
22-1414			11-919		
Jury commission			"Offense," definition of		
11-1401			11-919		
Appointment by District Court			"Offense," penalty for		
11-1401			11-919		
Compensation			Procedure		
11-1401			11-919		
Duties			Appeals		
11-1401			11-934		
Eminent domain, land for streets, draw-			Application for, contents		
ing of jury			11-934		
7-205			Notice of intention in open court		
Keeping record of names in jury box			11-934		
11-1411			Orders not suspended, when		
Number of members			11-934		
11-1401			Prompt hearing		
Qualifications of member			11-934		
11-1401			Remanding child to Juvenile Court		
Removal of members			11-934		
11-1401			Taken to Court of Appeals		
Juvenile Court			11-934		
Impaneling			Application of statute		
11-937			11-906		
Jury trial, right to			Children brought before by Washington Hu-		
11-915, 11-919			mane Society		
Term of service			32-209		
11-936			Children under 17 found in houses of ill fame,		
Notice to prospective jurors			commitment		
11-1414			32-209		
Failure to appear, penalty			Child, subject to statute		
11-1416			Committing to a National Training		
Return			School		
11-1415			11-915		
Service			Committing to Board of Public Welfare		
11-1415			11-915		
Omission of names from panel sworn in cause			Committing to private institution, agency		
11-319			11-915		
List submitted by parties			Evidence here inadmissible elsewhere		
11-319			11-915		
Paternity cases, right to jury trial			Examination by physician		
11-907			11-926		
Police Court			Examination by psychiatrist		
11-617			11-926		
Police Department members, exemption from			Examination by psychologist		
service			11-926		
4-128			Probation		
Special venire in criminal cases			11-915		
11-1413			Civil disabilities not to be imposed on child		
Struck jury, civil cases, United States Dis-			11-915		
trict Court			Clerk		
11-319			Appointment		
Special panel			11-922		
11-319			Audit of accounts		
Striking of name			11-940		
11-319			Deposit of fines, penalties, costs, for-		
Waiver of jury in civil cases, United States			feitures		
District Court			11-939		
11-317			Duties		
JURISDICTION			11-925		
See CRIMINAL PROCEDURE			Itemized statement of fines, penalties,		
Adoption proceedings			costs, forfeitures		
16-201			11-939		
Copyright cases			Salary		
11-307			11-922		
Criminal Court term			11-322		



**JUVENILE COURT—Continued**

	Sec.
Commitments to National Training School for Girls	32-908
Contempt, penalty	11-933
Cooperation of agencies, institutions, societies	11-931
Cooperation of all District departments	11-931
Cooperation of all District officials	11-931
Corporation counsel, duties	11-932
Court of record	11-904
Custodian, religious faith of parent	11-918
Definitions	11-906
"Adult"	11-906
"Child"	11-906
"Judge"	11-906
"The court"	11-906
Department of probation	
Chief probation officer, advances to by disbursing officer	47-116
Duties and powers	11-924
Director of social work	11-922
Appointment	11-922
Duties and powers	11-923
Salary	11-922
Establishment	11-901
Feeble-minded children, providing petition for admission to District Training School	32-620
Fees prohibited	11-935
Felony by child 16 or over	11-914
Transfer to proper court	11-914
Waiver of jurisdiction	11-914
Guardian	
Appointment by	11-917
Religious faith of child	11-918
Religious faith of parents	11-918
Hearing	11-915
General public excluded	11-915
Informal	11-915
Jury when	11-915
Parent, opportunity to be heard	11-915
Separate for children	11-915
Inferior court of District	11-101
Investigation	11-908
Judge	11-920
Administering oaths	11-904
Appointment by President	11-920
Authority to take acknowledgment of deeds	45-402
Continuance in office	11-942
Filling vacancy	11-921
Oath	11-920
Qualifications	11-920
Salary	11-920
Judgment	
Modification	11-916
Revocation	11-916
Judgments final	11-938
Jurisdiction	11-907
Adults	11-907
Concurrent with District Court when	11-907
Children	11-907
Custody	11-907
Compulsory school attendance cases	31-213
Contributing to delinquency of children	11-907
Exclusive	11-907
Guardianship	11-907

**JUVENILE COURT—Continued**

	Sec.
Jurisdiction—Continued	
Law violations before age of 18	11-907
Paternity cases	11-907
Original	11-907
Retention of jurisdiction	11-907
Jury	11-936
Compensation	11-936
Impaneling	11-937, 11-1407
Qualifications	11-936
Selection	11-936
Term	11-936
Notice	11-909
Oaths	11-904
Orders, power to issue	11-930
Payment of fines, penalties, costs, forfeitures	11-939
Person authorized to take bail after regular hours	23-610
Petition	11-908
Place of detention for child	11-927
Probation officers, appointment, salary	11-922
Purpose	11-902
Quarters	11-928
Records	11-929
Forms	11-929
Inspection limited	11-929
Return of absconding probationers	11-924 note
Rules, power to frame and publish	11-930
Seal	11-904
Separability of statutory provisions	11-941
Statute, liberal construction	11-904
Summons	11-909
Failure to obey, contempt	11-911
May authorize immediate custody	11-909
Service	11-910
Personal	11-910
Publication	11-910
Registered mail	11-910
Supervisor of probation, appointment, salary	11-922
Support of child, parent to pay	11-915
Taking child into custody	11-912
Placing in detention home	11-912
Placing with probation officer	11-912
Release to parent, guardian, custodian	11-912
Terms	11-905
Transfer from another court	11-913
Writs, power to issue	11-930

**JUVENILE OFFENDERS**

Antecedents investigated	3-118
Board of Public Welfare, supervisory powers	3-116
Children under 17	3-120, 3-121
Commitment to Board of Public Welfare	3-120, 3-121
Petty offenses, commitment	3-120, 3-121
Placement in suitable homes or institutions	3-120, 3-121
Females under 16, prostitution	22-2704
Place of imprisonment restricted	3-121

**KALE**

Sale by net weight authorized	10-115
-------------------------------	--------

**KENO**

Gaming, penalty	22-1504
-----------------	---------



**KEROSENE**See **TAXATION AND FISCAL AFFAIRS**

Motor fuel tax	47-1901—47-1919
Sale location license	47-2314
Approval of fire marshal	47-2314
Fee	47-2314
Storage license	47-2314
Approval of fire marshal	47-2314
Fee	47-2314

**KEY**See **FRANCIS SCOTT KEY BRIDGE****KIDNAPING**

Definition, penalty	22-2101
Killing while perpetrating, murder in the first degree	22-2401

**KITES**

Flying, penalty	22-1117
-----------------	---------

**KOSHER**

Mislabeled meat as	22-3404—22-3406
Definitions	22-3405
Penalty	22-3406

**LABELS**See **TRADE-MARKS AND TRADE NAMES**

Alcoholic beverage containers to be labeled for content	25-134
Bread loaf	10-113
Drugs, directions for use of on	2-614
Forgery of, penalty	22-1402
Labor union, registration	48-401—48-403
Mattresses	6-602, 6-603
Contents	6-603
False labels prohibited	6-602
Labeling required	6-602
Securely fastened to mattress	6-603
Narcotic drugs	33-412
False	33-420
Packages containing poison	2-601, 2-612
Prescriptions of physicians	2-612
Potatoes, mislabeling	22-3409—22-3412
"Reconstructed cream"	33-310
"Reconstructed milk"	33-310
"Skimmed milk"	33-310

**LABOR**See **APPRENTICES; CHILD LABOR; MINIMUM WAGE LAW; UNEMPLOYMENT COMPENSATION; WOMEN; WORKMEN'S COMPENSATION**

Apprentices	36-101—36-111
Bond to secure payment of wages, public contractors	1-804
Child labor	36-201—36-227
Common carrier employers' liability act	44-401—44-405
Federal laws applicable to District, see Public Buildings and Works	
Minimum wage law	36-401—36-422
Public buildings and works, prevailing wage rate paid, exceptions	1-815
Public contracts, separate contracts for materials and for labor	1-810
Unemployment Compensation Act	46-301—46-324
Unions, registration of union labels	48-401—48-403
Women, employment of	36-301—36-311

Sec.

**LABOR—Continued**

Sec.

Workmen's compensation	36-501, 36-502, 47-1504
Work or vacation permits	36-208—36-227

**LABORERS' LIEN**See **LIENS****LABOR ORGANIZATIONS**See **LABELS**

Income tax, when exempted	47-1502
Police, affiliation with, restrictions	4-125
Union labels, registration of	48-401—48-403

**LAFAYETTE PARK**

Buildings fronting, plans, approval by Commission of Fine Arts	5-410
--	-------

**LAGOON**

Construction in Potomac Park	
Authorization by Congress required	8-155
Expenditure of funds prohibited	8-155

**LANDLORD AND TENANT**See **EJECTMENT; LEASES**

Attornment	45-933, 45-934
Fraudulent	45-934
Unnecessary	45-933
Death of life tenant landlord, recovery of rent from under-tenant	45-921
Landlord's lien for rent	45-915
Enforcement by attachment	45-917
Fraudulent removal, conveyance or concealment of property subject, double value	45-920
Methods of enforcement	45-916
Action against purchaser with notice	45-916
Attachment	45-916
Judgment and levy	45-916
Payment before taking an execution	45-918
Leases of infants	45-927—45-930
Leases of lunatic	45-924—45-930
Married woman's power to execute lease	30-201
Notice to quit	45-901—45-906
Agreement regarding notice	45-908
Month to month tenancy	45-902
Not to be recalled	45-905
Quarter to quarter tenancy	45-902
Service of notice	45-906
Tenancy at will	45-903
Tenancy by sufferance	45-904
When unnecessary	45-901
Possessory actions	45-909—45-914
Consolidation of actions for possession, arrears of rent and double rent	45-912
Distress not void for irregularity	45-919
Ejectment in District Court	45-910
Ejectment of married woman	45-913
Forcible entry and detainer in Municipal Court	45-910
Joinder of possession, arrears of rent and double rent	45-911
Plea of title in Municipal Court, procedure	45-914
Recovery of real and personal property leased together	45-909



LANDLORD AND TENANT—Continued	Sec.	LEAVES OF ABSENCE—Continued	Sec.
Possessory actions—Continued		Fire Department members	4-408—4-410
Summary proceedings for possession in		Absence exceeding 20 days in year without	
Municipal Court	45-910	pay	4-409
Recovery for use and occupation	45-923	Emergency, cancelation	4-410
Recovery of real and personal property leased		Leave in lieu of Sunday	4-410
together	45-909	Number of days allowed with pay	4-408
Recovery of rent on lease for life or lives	45-922	Sick leave	4-409
Refusal to quit after notice, double rent for	45-907	Park police	4-207
Rights of assignee of lessee	45-932	Number of days allowed with pay	4-207
Rights of grantee or assignee of reversion	45-932	Sick leave	4-207
Surrender for new lease, effect	45-931	Police Department, sick leave	4-180
Termination of tenancies	45-901—45-906	Teachers, school officials, employees	31-632—31-637
Unsafe structures, building inspector making			
safe, liability for costs	5-503	LECTURES	
Waste	45-1301—45-1304	Buildings for, licenses	47-2320
LARCENY			
After trust, penalty	22-2203	LEGAL HOLIDAYS	
Building associations	26-404	See HOLIDAYS	
Grand, definition, penalty	22-2201	LEGALIZING ACTS	
Indemnity companies	26-320	Alleys previously closed	7-329
Petit, definition, penalty	22-2202	Existing alleys in city of Washington	7-328
Restitution, order of	22-2202		
Stolen warehouse receipts, negotiation, effect	28-2011	LEGAL SEPARATION	
Title companies	26-320	See DIVORCE	
Trust companies	26-320	When ground for divorce	16-403
LAUNDRIES			
Hand power, license	47-2317	LEGATEES	
Mechanical power, license	47-2317	See DECEDENTS' ESTATES	
LAW MERCHANT		Meetings with next of kin	18-723
Application to			
Fiduciaries	28-2312	LEGITIMACY	
Negotiable instruments	28-101	See DECEDENTS' ESTATES; WILLS	
Warehouse receipts	28-2201	Illegitimate children	18-107, 18-716
LAW OF DESCENT		Decedent's estate, distribution of	18-716
See DECEDENTS' ESTATES		Descent, law of	18-107
LAWS AND ORDINANCES		Issue of bigamous marriage	16-406
Execution by Commissioners	1-220	Issue of lunatic's annulled marriage	16-407
LEAD		Issue of marriage dissolved by divorce, con-	
Poisonous compounds, sale, restrictions	2-612	testing parentage	16-408
LEAP YEAR		Not affected by absolute divorce	16-408
See COMPUTATION OF TIME		Paternity cases, jurisdiction, jury trials	11-907
LEASES			
See EJECTMENT		LEGITIMATE THEATERS	
District executing, procedure	1-214	See THEATRES AND SHOWS	
Form	45-301	LEVY COURT	
Land acquired for park or playground pur-		Records and papers made property of Dis-	
poses pending need for use	8-105	trict	1-106
Lessee, as defendant in ejectment	16-501	LEWDNESS	
Lessor, as defendant in ejectment	16-501	See ASSIGNATION; HOUSES OF PROSTITUTION;	
Wharf property, maximum duration	9-102	PANDERING; PROSTITUTION	
LEAVES OF ABSENCE		Premises occupied for	22-2713—22-2722
Employees of District	1-312	Bawdy-house, keeping	22-2722
Federal law made applicable	1-312	Disorderly house, keeping	22-2722
Holidays, leaves with pay	1-314	Nuisance	22-2713—22-2721
Members of Police and Fire Department		Abatement of	22-2713—22-2719
excepted	1-312	Bond for abatement	22-2719
Per diem employees	1-313	Costs in action to abate	22-2715
Public school officers, teachers and em-		Declared such	22-2713
ployees excepted	1-312	Delivery of premises, order for	22-2719
Regular annual employees	1-312	Injunction	22-2714, 22-2717
		Order for abatement	22-2717
		Sale of property	22-2717, 22-2718
		Tax for maintaining	22-2720
		Witnesses, granting immunity to	22-2721



**LIABILITY INSURANCE**

	Sec.
Steam boilers	1-707
Termination, certificate invalidated	1-710

**LIBEL**See **BLACKMAIL**

Blackmail	22-2305
Justification	22-2303
Penalty	22-2301
Publication	22-2302
Sufficiency of	22-2302
Unchastity, accusing woman of	22-2304

**LIBRARIES**See **PUBLIC LIBRARIES**

Exemptions from taxation	47-801—47-1208
Public libraries	37-101—37-109

**LIBRARY OF CONGRESS**

Court of Appeals Judges, withdrawal of books	11-102
United States District Court Judges, withdrawal of books	11-102

**LICENSED VENDERS**

Police Department, supervisory powers	4-147—4-150
---------------------------------------	-------------

**LICENSES**See **ALCOHOLIC BEVERAGES; BARBERS; BOXING****EXHIBITIONS; COSMETOLOGISTS; DENTISTRY;****HEALING ARTS PRACTICE ACT; OPTOMETRY;****PHARMACY; PODIATRY; TAXATION AND FISCAL****AFFAIRS; VETERINARIANS**

Abattoirs, or slaughterhouses	47-2316
Approval of health officer required	47-2316
Compliance with laws concerning location required	47-2316
Fee	47-2316
Abolition by Commissioners of the District	47-2344
Amusement parks	47-2323
Fee	47-2323
Prerequisites to license	47-2302
Apartment houses	47-2329
Definition	47-2329
Prerequisites to license	47-2302
Without restaurant, fee	47-2329
With restaurant, fee	47-2329
Application for licenses	47-2301
Athletic exhibition grounds	47-2323
Auctioneers, fee	47-2309
Bakeries, fee	47-2327
Ballrooms, fee	47-2320
Barber and beauty shops, fee	47-2310
Baseball grounds, fee	47-2323
Bottling establishments, fee	47-2327
Bowling alleys	47-2321
Approval of major and superintendent of police required, exception	47-2321
Fee	47-2321
Business licenses, general	47-2301—47-2350
Bus lines	47-2331
Application to public utilities commission	47-2331
Extension, new application required	47-2331
Identification tags	47-2331
Payment to collector of taxes	47-2331
Tax rate	47-2331

**LICENSES—Continued**

	Sec.
Candy manufacturing establishments, fee	47-2327
Carnivals	
Buildings for, fee	47-2320
Outdoor, fee	47-2326
Circuses	
Maximum fee	47-2325
Transported by railroad, fee	47-2325
Transported by wagons or trucks, fee	47-2325
Clairvoyants	47-2342
Commission merchants dealing in food, fee	47-2327
Creation by Commissioners of the District	47-2344
Dairies, fee	47-2327
Dance halls, fee	47-2320
Dangerous weapons, dealers in, fee	47-2340
Date and expiration	47-2305
Delicatessens, fee	47-2327
Detective agencies	47-2341
Approval by major and superintendent of police	47-2341
Definition	47-2341
Fee	47-2341
Operation without license prohibited	47-2341
Police laws applicable	47-2341
Regulations	47-2341
Drive-it-yourself establishments, fee	47-2332
Drivers of sight-seeing buses	47-2331
Badge, display	47-2331
Fee	47-2331
Record in department of vehicles and traffic	47-2331
Drivers of taxicabs and hacks	47-2331
Badge, display	47-2331
Fee	47-2331
Record in department of vehicles and traffic	47-2331
Druggists, apothecaries and patent-medicine sellers, fee	47-2308
Dry cleaning or dyeing establishments, fee	47-2317
Each place of business to be licensed separately	47-2304
Entertainments, buildings for, fee	47-2320
Exemption of concerts for church or charity	47-2320
Exemption of entertainments for church or charity	47-2320
Exemption of performances for church or charity	47-2320
Exhibition buildings, fee	47-2320
Explosive storage and sale establishments	47-2314
Fairs,	
Buildings for, fee	47-2320
Outdoor, fee	47-2326
Food products generally, fee	47-2327
Football grounds, fee	47-2323
Fortune tellers	47-2342
Garages, fee	47-2334
Gas-fitters	2-1406
Gasoline stations	47-2314
Approval of fire marshal required	47-2314
Fee	47-2314
General license law	47-2301—47-2350
Construction	47-2307
Definitions	47-2307
Grocery stores, fee	47-2327



## LICENSES—Continued

	Sec.
<b>Guides</b>	47-2338
Approval of major and superintendent of	
police	47-2338
Badges	47-2338
Examinations	47-2338
Fee	47-2338
<b>Gun dealers</b>	47-2340
Approval of major and superintendent of	
police	47-2340
Fee	47-2340
Regulations	47-2340
<b>Hauling vehicles operating from public space, fee</b>	47-2333
<b>Hawkers, fee</b>	47-2336
<b>Hotels</b>	47-2328
Definition	47-2328
Fee	47-2328
Prerequisite to license	47-2302
<b>Ice cream manufacturing establishments, fee</b>	47-2327
<b>Ice cream parlors, fee</b>	47-2327
<b>Kerosene storage and sale establishments</b>	47-2314
Approval of fire marshal required	47-2315
Fee	47-2315
<b>Laundries</b>	47-2317
Handpower, fee	47-2317
Other than handpower, fee	47-2317
<b>Lecture halls, fee</b>	47-2320
<b>Livery stables</b>	47-2335
<b>Lodginghouses</b>	47-2330
Definition	47-2330
Fee	47-2330
Prerequisites to license	47-2302
<b>Market stands handling food, fee</b>	47-2327
<b>Massage and bath establishments, fee</b>	47-2311
<b>Mattresses</b>	47-2318
Definition	47-2318
Manufacturing or renovating, fee	47-2318
Storing or selling, fee	47-2318
<b>Meat shops, fee</b>	47-2327
<b>Mediums</b>	47-2342
<b>Motion picture film storage establishments</b>	47-2313
Approval of fire marshal required	47-2313
Fee	47-2313
<b>Motor vehicle rental establishments, fee</b>	47-2332
<b>Motor vehicle repair establishments, fee</b>	47-2334
<b>Necessity for license</b>	47-2301
<b>Outdoor signs</b>	1-232
<b>Palmists</b>	47-2342
<b>Passenger vehicles for hire, capacity of eight or more, fee</b>	47-2331
<b>Peddlers, fee</b>	47-2336
<b>Phrenologists</b>	47-2342
<b>Plumbers</b>	2-1406
<b>Posting</b>	47-2306
<b>Prerequisites</b>	47-2301, 47-2302
<b>Private detectives</b>	47-2341
Acting as, without license prohibited	47-2341
Approval by major and superintendent of	
police	47-2341
"Detective" defined	47-2341
Fee	47-2341
Regulation	47-2341
<b>Professional licenses, general</b>	47-2301—47-2350
<b>Public bath establishments, fee</b>	47-2312

## LICENSES—Continued

	Sec.
<b>Pyroxylin storage establishments, fee</b>	47-2315
<b>Refund of erroneously paid fees</b>	47-2350
<b>Refusal, refund of payment</b>	47-1017
<b>Regulations for, by Commissioners of the District</b>	47-2345
<b>Restaurants</b>	47-2327
Definition	47-2327
Fees	47-2327
In apartment houses, separately owned	47-2329
<b>Routed passenger vehicles without rails or tracks</b>	47-2331
<b>Secondhand dealers</b>	47-2339
Definition	47-2339
Fee	47-2339
Purchase of stolen goods, revocation	47-2339
<b>Separate license for each trade or profession</b>	47-2304
<b>Service stations</b>	47-2334
<b>Shooting galleries</b>	47-2322
Fee	47-2322
Requirements	47-2322
<b>Sight-seeing buses</b>	
Fee	47-2331
Identification tags	47-2331
<b>Skating rinks, fee</b>	47-2320
<b>Slot machines, fee</b>	47-2319
<b>Soda fountains, fee</b>	47-2327
<b>Soft drink establishments, fee</b>	47-2327
<b>Solicitors, house to house</b>	47-2337
Application, contents	47-2337
Bond	47-2337
Definition	47-2337
Fee	47-2337
<b>Soothsayers</b>	47-2342
<b>Steam and other operating engineers</b>	2-1501—2-1507
<b>Suspension of</b>	
Cosmetologists	2-1304
Dentists	2-311, 2-312
Healing Arts, license to practice	2-123
Conviction of felony, appeal, effect	2-131
Plumbers	2-1405
<b>Swimming pools, fee</b>	47-2324
<b>Taxicabs and hacks</b>	47-2331
Fee	47-2331
Identification tags	47-2331
Regulation by public utilities commis-	
sion	47-2331
<b>Telling fortunes</b>	47-2342
Approval of major and superintendent of	
police	47-2342
Fee	47-2342
Persons exempted	47-2342
<b>Theatres</b>	47-2303, 47-2320
Compliance with fire and building laws	47-2303
Legitimate or burlesque, fee	47-2320
Motion picture, fee	47-2320
<b>Trade licenses, general</b>	47-2301—47-2350
<b>Use of license by others prohibited</b>	47-2304
<b>Venders</b>	47-2336
Badges	47-2336
Fee	47-2336
From vehicles, tags	47-2336
Sellers of own produce in markets or at	
wholesale exempted	47-2336
<b>Wholesale fish and sea food dealers, fee</b>	47-2327



## LIENS

Sec.

See JUDGMENTS AND DECREES; TAXATION AND  
FISCAL AFFAIRSAlleys or minor streets, condemnation pro-  
ceedings, assessments

7-321

Artisans 38-124—38-126

Enforcement by bill in equity 38-126

Enforcement by sale 38-125

Right to lien 38-124

Benning Bridge, cost of construction, street  
railway 7-514

Certificate of delinquent personal taxes 47-1406

Contractors' liens 38-101—38-126

Executions 15-206

Expiration of judgment lien 15-103

Garage keepers 38-201—38-203

Enforcement by bill in equity 38-203

Enforcement by sale 38-202

Right to lien 38-201

Hospitals 38-301—38-305

Failure to pay hospital, liability 38-303

Hospital lien docket 38-305

Lien on damages in accident cases 38-301

Notice of lien 38-302

Contents 38-302

Filing with District Court clerk 38-302

Mailing copy to alleged tortfeasor 38-302

Mailing copy to insurer, if ascer-

tained 38-302

Right to inspect hospital ledgers 38-304

Hotel and lodging houses 34-103—34-105

Insanitary buildings, remedying condition at  
public expense 5-607, 5-614

Judgments and decrees as liens 15-103

Judgments of Municipal Court 11-718

Laborers 38-103—38-122

Landlord's lien for rent 45-915—45-920

Enforcement 45-916, 45-917

Property subject 45-915

Liverymen 38-201—38-203

Enforcement by bill in equity 38-203

Enforcement by sale 38-202

Right to lien 38-201

Materialmen's liens 38-101—38-126

Mechanic's lien on personal property  
38-124—38-126Mechanics, materialmen and contractors  
38-101—38-126

Contractor not preferred to subcontractor 38-112

Decree against sureties 38-120

Decree of sale 38-111

Distribution of proceeds of sale 38-113

Enforcement 38-110

Bill in equity 38-110

Consolidation of suits 38-110

Joining all in suit 38-110

Parties 38-110

Entry of satisfaction 38-117

Extent of ground bound 38-116

Fixtures 38-101

Judgment for deficiency upon a sale 38-122

Notice of intent to hold 38-102

Contents 38-102

Filing with District Court clerk 38-102

On wharves and lots 38-123

## LIENS—Continued

Sec.

Mechanics, materialmen and contractors—  
Continued

Payment into court, release 38-118

Penalty for failure to enter satisfaction 38-117

Persons employed by contractors 38-103—38-122

Priority of lien 38-109

Property liable 38-101

Recording 38-102

Several buildings 38-114

Subcontractor, materialmen, laborers 38-103

Advance payments by owner to con-  
tractor, effect 38-108

Conditions 38-104

Entitled to know terms of contract 38-107

Not entitled to personal judgment  
against owner, exception 38-121

Notice to owner 38-105

Owner's duty 38-106

Preferred to contractor 38-112

Right to lien 38-103

Time for commencement of suit 38-115

Undertaking for release from lien 38-118

Undertaking to discharge liens before  
suit 38-119

## Motor vehicles

Appropriations 40-715

Assignment 40-708

Entry and recording 40-708

Entry where certificate is not avail-  
able 40-709

Form and requirements 40-708

Effect of liens not entered on certificate  
of title 40-702

Entering on certificate of title 40-702

Entry by Recorder on certificate of title 40-703

Entry of lien

On application for certificate of title 40-706

On certificates previously issued 40-707

Entry of lien shown as application for cer-  
tificate, procedure 40-706

Entry where certificate is not available 40-709

False statements as to, penalty 40-714

Instrument creating, form and require-  
ments 40-704

Manner of entry on certificates of title 40-703

Place and method of recording 40-713

Possession of certificate 40-710

Priority of liens 40-703

Prior liens 40-702

Recording fees 40-712

Requirements for entry on certificate of  
title 40-704

Satisfaction 40-710, 40-711

Duties of lienec 40-710

Duty of Recorder 40-711

Where certificate is lost 40-711

To be kept in director's office 40-705

Violation of law, penalty 40-714

Motor vehicles and trailers 40-701—40-715

Negotiable instrument, lienor holder for value  
28-204Preference not affected by assignments for  
benefit of creditors 28-2606



LIENS—Continued		Sec.	LIMITATION OF ACTIONS—Continued		Sec.
Seller's lien, negotiable warehouse receipts issued		28-2013	Discretionary pleading, to creditors' claims in decedents' estates		18-515
Sewer connections made at public expense, cost taxed against premises		6-404	District of Columbia, defendant		12-208
Street and other public improvement assessment under permit system		7-608	Notice of injury		12-208
Street improvement assessment		7-622	Police report as notice		12-208
Streets, opening, widening, or extending, assessments for benefits		7-211	Executor's or administrator's bond		12-201
Unsafe structures and excavations, removal or correction at public expense		5-503, 5-504	Extension of, due to disabilities		12-201
Viaducts, construction over railway and canal rights of way		7-502	Foreign judgments		12-203
Warehouseman's lien		28-1921—28-1930	Instruments under seal		12-201
Charges and expenses giving rise to lien		28-1921	Judgments and decrees		15-101
Charges prior to storage, noting on negotiable receipts required		28-1924	Negligence causing death		16-1202
Goods subject to lien		28-1922	Personal property		12-201
Loss of lien		28-1923	Detention of		12-201
Negotiable receipts issued, subsequent charges		28-1924	Recovering		12-201
Other remedies not precluded		28-1926	Probate Court jurisdiction		11-512
Remedies for enforcing		28-1929	Property damage		12-201
Right to hold goods until lien satisfied		28-1925	Real property, recovering		12-201
Sale of goods to satisfy lien		28-1927	Simple contract		12-201
Third person satisfying		28-1927	Statutory penalty or forfeiture		12-201
Weeds on property, cutting at public expense		6-902	Tax refund		1-903
<b>LIEUTENANTS</b>			Tolling of statute		12-201
Fire Department		4-404	Absence of defendant		12-205
Salary		4-405	Action stayed		12-206
Park police		4-202	Disabilities		12-201
Police department		4-106, 4-108, 4-109	Torts to person		12-201
Bond		4-109	United States real plaintiff, no bar when		12-204
Number		4-106	Unspecified actions		12-201
Salary		4-108	Wills, effect on debts in		12-207
<b>LIFE ESTATES</b>			Wrongful death		16-1202
See ESTATES			<b>LIMITATION OF HOURS</b>		
Parks, grantor of land reserving limited interest for life		8-103	Laborers and mechanics on public works		22-3407, 22-3408
<b>LIFE INSURANCE</b>			Penalty		22-3408
See INSURANCE AND INSURANCE COMPANIES			<b>LIMITED PARTNERSHIPS</b>		
Alien life companies		35-601, 35-602	See PARTNERSHIPS		
Death benefits exempted from income tax		47-1504	<b>LIQUID MEASURE</b>		
Domestic life companies		35-501—35-540	Standard measure, dimensions		10-119
Foreign life companies		35-601	<b>LIQUOR</b>		
Life insurance act		35-301—35-803	See ALCOHOLIC BEVERAGES		
<b>LIGHTS</b>			<b>LITERARY ASSOCIATIONS</b>		
See STREET LIGHTING			Income tax exemptions		47-1502
Bridges, lighting of		7-501	<b>LITERATURE</b>		
Power to maintain outside city limits		1-234	Corporations for		29-601
Streets, lighting of		7-701—7-710	<b>LIVERY STABLES</b>		
<b>LIGHT WINES</b>			License		47-2335
Defined		25-103	Lien		38-201, 38-203
<b>LIMITATION OF ACTIONS</b>			<b>LIVESTOCK</b>		
Absence of defendant, statute tolled		12-205	Dairy inspector acting as inspector of		6-116
Action stayed, statute tolled		12-206	Garbage, use in feeding live stock		6-503
Actions to recover usury paid		28-2704	<b>LOAN ASSOCIATIONS</b>		
Common Carrier Employers' Liability Act		44-404	See BUILDING ASSOCIATIONS		
Contractor's bond, action on		1-804	<b>LOANS</b>		
Decedents' estates, suits against		12-202	See PETTY LOANS		
Disabilities, extension for		12-201	<b>LOAN SHARK LAW</b>		
			See PETTY LOANS		



<b>LOCOMOTIVES</b>	Sec.	<b>LUTHER STATUE ASSOCIATION</b>	Sec.
Ashes and cinders, accumulations prohibited	6-801	Property exempted from taxation	47-812
Endangering passage of, penalty	22-3119	<b>LYE</b>	
Exemption from Boiler Inspection Act	1-709	Concentrated lye, sale, regulation	2-601
Noisome odors prohibited	6-801	<b>McPHERSON STREET</b>	
Smoke Prevention Law	6-801-6-804	Abandonment in part authorized	7-123 note
<b>LODGING-HOUSES</b>		<b>MAIL</b>	
See FIRE ESCAPES AND SAFETY PROVISIONS;		Affidavit of mailing copy of publication	13-111
HOTELS AND LODGINGHOUSES		Depositing notice of dishonor in post office, effect	28-717, 28-718
Definition	5-312	Eminent domain, assessment of land no part of which taken, notice	7-221
Fire escapes and safety provisions	5-301-5-315	Fire escapes and safety provisions, requiring construction, service of notice	5-310
Nonfireproof building, limitation on height	5-401	Notices of dishonor	
<b>LOGAN CIRCLE</b>		Addresses to which sent	28-720
Iowa Circle, name changed	7-107 note	Mailing, time limit	28-715, 28-716
<b>LONG BRIDGE</b>		Order closing public ways, service	7-404
Draw in bridge, duty to maintain	7-508	<b>MAINE AVENUE</b>	
Maintenance cost, payment by Baltimore and Potomac Railroad Company	7-508	Water Street Southwest, name changed	7-107 note
Tugboats passing under without use of draw, construction requirements	7-509	<b>MAJOR AND SUPERINTENDENT OF POLICE</b>	
Use by other railroad companies	7-508	See POLICE DEPARTMENT; SUPERINTENDENT OF POLICE	
<b>LOST INSTRUMENTS</b>		<b>MALE ORPHAN ASYLUM SOCIETY</b>	
Protest of lost or destroyed bill of exchange	28-936	Deed of transfer to Columbia Institution for the Deaf	31-1003
Warehouse receipts	28-1907	<b>MALICIOUSLY DISFIGURING</b>	
Bond to protect warehouseman, goods delivered	28-1907	Penalty	22-506
Delivery of goods under order of court	28-1907	<b>MALL PARK SYSTEM</b>	
<b>LOST PROPERTY</b>		Buildings fronting, plans, approval by Commission of Fine Arts	5-410
Police Department records, open to public inspection	4-135	<b>MANDAMUS</b>	
Police registry book	4-134	Appeal, bond	16-1010
Property clerk made custodian	4-152	Compelling the filing of personal property tax schedules	47-1209
Record kept, contents	4-153	Corporation failing to publish annual report	29-214
<b>LOTS</b>		Costs	
See BUILDING LINES; PLATS; SUBDIVISIONS		Judgment for defendant	16-1007
Sewer and water-main connections	6-401-6-404	Judgment for petitioner	16-1006
<b>LOTTERIES</b>		Defendant's answer, contents, verification	16-1003
Complaints, right of entry, searches and seizures	4-145	Defendant's default	16-1008
Destruction of property seized	4-146	Denial of writ	16-1009
Duty of Commissioners to enforce laws concerning	4-119	Granting of writ	16-1008
Promotion	22-1501	Enforcement of inheritance and estate taxes	47-1620
Prosecution of persons arrested	4-146	Granting writ	16-1006
Tickets	22-1501-22-1503	Jury trial may be required	16-1006
Permitting sale on premises	22-1503	Petition, contents and verification	16-1001
Possession of	22-1502	Pleadings and proceedings	13-320, 16-1004
Selling	22-1501	Rule to show cause, service	16-1002
<b>LOUISE HOME</b>		Trial	16-1005
Property exempted from taxation	47-805	Use by Public Utilities Commission	43-204
<b>LOW-COST HOUSING</b>		Writ abolished as to United States District Court for District of Columbia	16-1001 note
Alley dwellings, slum-clearance projects	5-103-5-105	<b>MANICURIST</b>	
<b>LUNACY</b>		Definition	2-1301
See INSANE PERSONS		Limited certificate under Cosmetologists Law	2-1309
Ground for annulment of marriage	16-403, 30-104	<b>MANSLAUGHTER</b>	
"Lunatic" includes every idiot, non compos and insane person	49-207	Punishment	22-2405
Proceedings in lunacy cases	21-307	Vehicle, includes negligent homicide	40-607



**MANUSCRIPTS**

Stealing or injuring, penalty 22-3106

**MAPS**

District opening and closing alleys on own lands 7-312  
 Permanent highway plan 7-109  
 Preservation by surveyor 1-606  
 Property of District 1-106  
 Zoning Commission maps, copy filed with Engineer Commissioner 5-421  
 Zoning regulations, amendment 5-415—5-417, 5-420  
   Board of Adjustment prohibited from amending 5-420  
   Submission to Advisory Council 5-417

**MARINE CORPS**

Children of officers and men stationed outside District, admission to schools without tuition 31-305

**MARINE ENGINEERS**

Fire Department 4-404  
 Salary 4-405

**MARINE FIREMEN**

Fire Department 4-404  
 Salary 4-405

**MARINE INSURANCE**

See **INSURANCE AND INSURANCE COMPANIES**  
 Definitions 35-1101, 35-1303  
 Domestic mutual marine companies 35-1104  
 Domestic stock marine companies 35-1103, 35-1314, 35-1316  
 Foreign marine companies 35-1105

**MARINE PRODUCTS**

Wholesale dealers, license 47-2327

**MARKERS**

Highway boundaries 7-105

**MARKETS**

Center market, discontinuance of use 10-137 note  
 Employees to receive no compensation in addition to salaries 47-128  
 Farmers produce market 10-136, 10-137  
   Charges for use of space 10-136, 10-137  
   Control and regulation by Commissioners of District 10-137  
   Location 10-136, 10-137  
 Fish wharf and market 10-135  
 Investigation of sale, distribution or prices of commodity by superintendent of market 10-130  
 Rents, fees and income payable to collector of taxes 47-128  
 Supervision by superintendent of weights, measures, and markets 10-130  
 Wholesale producers market 10-136  
   Charges for space, collection, maximum amount 10-136  
   Disposition made of receipts 10-136  
   Location 10-136

**MARKS**

See **TRADE-MARKS AND TRADE-NAMES**  
 Pay roll, signing by mark, witnesses 1-315

**MARRIAGE**See **ABATEMENT AND REVIVOR; ANNULMENT; DIVORCE; HUSBAND AND WIFE**

Annulment 30-102—30-105  
 Authority to celebrate 30-106, 30-107  
 Celebration by unauthorized person prohibited 30-107  
 Celebration without license, penalty 30-108  
 Colored persons married by customary practices, legitimacy of children for property rights 30-117  
 Contracts in consideration of marriage, effect of statute of frauds 12-302  
 Duress of female, penalty 22-2705  
 Illegal marriage entered into outside District, by residents of District, is void 30-105  
 Joinder of spouse in petition for adoption 16-201  
 License to marry 30-108—30-114  
   Application 30-110  
   Certificate to contracting parties, form 30-112  
   Consent of parent or guardian, when required 30-111  
   Failure to make return, penalty 30-113  
   Form 30-112  
   Issuance 30-109  
   Perjury in securing 30-110  
   Prerequisites to issuance 30-110  
   Return, form 30-112  
 Persons authorized to perform 30-106  
   Ordained minister, on authority of District Court justice 30-106  
   Judges of courts of record 30-106  
   Religious sect without intervention of a minister 30-106  
 Prohibited marriages 30-101  
   Declared void ab initio 30-101  
   Decrees declaring void 30-102  
   Man, with relatives 30-101  
   Previous marriage unterminated 30-101  
   Woman, with relatives 30-101  
 Record 30-114  
 Records transferred from Health Department 30-115  
 Slave marriages validated 30-116  
 Suit to determine validity 16-422  
 Unauthorized person performing, penalty 30-107  
 Voidable marriages 30-102  
   Idiot or lunatic 30-103  
   Non-age 30-103  
   Physical incapacity 30-103  
   Procured by force or fraud 30-103  
 Void from date of nullity decree 30-102  
 Void marriages 30-101  
 Widow of tenant in common 16-1303  
 Wife of tenant in common 16-1304

**MARRIED WOMEN**

See **HUSBAND AND WIFE; MARRIAGE**  
 Acknowledgment of, notary's power to take 1-511  
 Depositions of, notary's power to take 1-511  
 Oaths of, notary's power to administer 1-511  
 Power to act as feme sole 30-201, 30-208

**MARSHAL**

Absentees' and absconders' estates, warrant 20-702  
 Alleys or minor streets, condemnation proceedings, fee 7-318



<b>MARSHAL—Continued</b>	<b>Sec.</b>	<b>MATRONS—Continued</b>	<b>Sec.</b>
Appointment by President	11-1101	Police Department—Continued	
Bond	11-1101	Lost or abandoned children, duties	4-117
Charge of Police Court Jury	11-618	Number appointed	4-116
Criminal Court term, duty to attend	11-323	Qualifications	4-118
Dating writs of execution	15-207	Recommendation for appointment re-	
Duties	11-1101	quired	4-118
Fees	11-1102		
Collection of	11-1102	<b>MATTRESSES</b>	
Covered into Treasury	11-1102	Definition of terms used	6-601, 47-2318
Fees and costs	11-1510	Evidence of violations of law furnished cor-	
Fees and fines collected by, apportionment be-		poration counsel	6-607
tween District and United States	11-330	Guaranty of manufacturer	6-604
Levy on property held, in attachment and gar-		Contents	6-604
nishment	16-313	Protection of dealer or retailer	6-604
Notice to prospective jurors	11-1414	Health officer, duty to administer law	6-606
Return	11-1415	Investigation of suspected violations of law	6-607
Service	11-1414	Labels	6-602, 6-603
Oath	11-1101	Contents	6-603
Restoring possession of United States prop-		Description	6-603
erty	11-1104	False labels prohibited	6-602
Term	11-1101	Securely fastened to mattress	6-603
Vacancy, how filled	11-1103	Selling without label prohibited	6-602
		Manufacturers and renovators	6-602
<b>MARYLAND</b>		Mattresses composed of second-hand ma-	
Agreement with District for use of sewers	1-817	terial, selling or giving away, restric-	6-602
Payment of share of cost	1-817	tions	
Land for park purposes, acquisition by Dis-		Mattresses from sanitarium or hospital,	
trict	8-102	renovation prohibited	6-602
Laws adopted for District, recovery of pen-		Mattress used by individual having infec-	
alties	13-222	tious or contagious disease	6-602
		Nonresident manufacturers, prosecu-	
<b>MASSACHUSETTS AVENUE</b>		tion	6-604
Naval Observatory grounds, public street	7-121	Removing or concealing label prohibited	6-602
		Right of entry to inspect places of busi-	
<b>MASSAGE ESTABLISHMENTS</b>		ness	6-607
Exemption from Healing Arts Practice Act	2-134	Second-hand material, use by manufac-	
License	47-2311	turer prohibited	6-602
Approval by major and superintendent of		Selling, exchanging, or giving away mat-	
police	47-2311	tress used in hospital or by individual	
Fee	47-2311	having communicable disease prohib-	
Revocation for unlawful acts	47-2311	ited	6-602
Unlawful acts enumerated	47-2311	Manufacturing establishment license	47-2318
		Penalties for violating regulatory law	6-605
<b>MATERIALMEN</b>		Regulations under Mattress Law, powers of	
Bond to secure payment of claim, public con-		Commissioners	6-606
tract	1-804	Renovating establishment license	47-2318
Public contracts, separate contracts for mate-		Sale location license	47-2318
rials and labor	1-810	Seizure and destruction of unlawful mat-	
		tresses	6-608
<b>MATERIALMEN'S LIENS</b>		Storage license	47-2318
See <b>LIENS</b>			
<b>MATERIA MEDICA</b>		<b>MAYHEM</b>	
Dentist, examination for license	2-308	Definition, penalty	22-506
Podiatry license examination	2-705	Killing while perpetrating, murder in the first	
		degree	22-2401
<b>MATERNITY AND INFANCY</b>			
See <b>MIDWIFERY</b>		<b>MEANING OF WORDS</b>	
Blindness in infants, prevention	6-201—6-204	See <b>DEFINITIONS</b>	
Inflammation of eyes, notice given, treat-			
ment	6-202, 6-203	<b>MEASURES</b>	
Penalty for violating law	6-204	See <b>WEIGHTS, MEASURES, AND MARKETS</b>	
Prophylactic, provision for	6-201		
		<b>MEASURING DEVICES</b>	
<b>MATRONS</b>		Sale or interest in sale by superintendent of	
Police Department	4-116—4-118	weights and measures prohibited	10-125
Duties in general	4-117		
Female prisoners, examination and care	4-117		



- MEAT**  
 See **KOSHER**  
 Meat shop license 47-2327
- MECHANICS**  
 Plans and specification for building, right to make, signing required 2-1017
- MECHANICS' LIENS**  
 See **LIENS**  
 Lien law 38-101—38-126
- MEDALS**  
 Police and Fire Departments, awards for meritorious service 4-701—4-704
- MEDICAL AND DENTAL COLLEGES**  
 Application for registration and permit 31-902  
 Application of chapter 31-901  
 Colleges not incorporated by special act of Congress only 31-901  
 Injunction to restrain operation of unregistered colleges 31-904  
 Inquiry and hearing on application 31-902  
 Issuing degrees 31-901  
 Jurisdiction of District Court in injunction proceedings 31-904  
 Penalty for failure to register and obtain permit 31-903  
 Permit for Commissioners of the District required 31-901  
 Registration with Board of Commissioners, required 31-901  
 Regulations regarding applications 31-902  
 Repeal provisions 31-905
- MEDICAL APPLIANCES**  
 Leaving in streets or public places prohibited 2-615
- MEDICATED BATH ESTABLISHMENTS**  
 License 47-2311  
   Approval by major and superintendent of police 47-2311  
   Fee 47-2311  
   Revocation for unlawful acts 47-2311  
 Unlawful acts enumerated 47-2311
- MEDICINE AND OSTEOPATHY**  
 See **HEALING ARTS PRACTICE ACT**  
 Basic sciences, knowledge of required 2-110  
 Board of Examiners 2-106, 2-109, 2-110  
   Allopathic members of board 2-109  
   Certification of qualified applicants for license to commission 2-109  
   Chairman 2-106  
   Educational qualifications of members 2-109  
   Examination of applicants for license 2-106, 2-109, 2-114—2-117  
   Examination of paper of applicants for license 2-109  
   Homeopathic members of board 2-109  
   Number of members 2-106  
   Osteopathic member of board 2-109  
   Qualifications of members 2-106, 2-109  
   Reference of applicants for license to board 2-106, 2-110  
   Secretary 2-106  
   Term of office 2-106
- MEDICINE AND OSTEOPATHY—Con.**  
 Sec.  
 Compounders subject to druggist license 47-2308  
 Deceased indigent, distribution of bodies among schools and boards 2-203—2-207  
   Allotment among schools 2-203  
   Bond given by schools 2-204  
 Dispensers subject to druggist license 47-2308  
 Examination as basis for issuing license 2-122  
   Educational requirements 2-122  
   Proof required of applicant 2-122  
 Reciprocity as basis of issuing license 2-121  
 Relicensing of licensees under prior law 2-120
- MEDIUMS**  
 See **FORTUNE TELLERS**
- MEMORIAL FOUNTAIN**  
 Police Department members, acceptance and maintenance authorized 4-901
- MERCHANDISE**  
 See **SALES**; **STATUTE OF FRAUDS**  
 Conveyance in fraud of creditors 12-401
- MERCURY**  
 Poisonous compounds, sale, restrictions 2-612
- MERIDIAN HILL PARK**  
 Appropriations for maintenance and improvement 8-112  
 Part of park system of District 8-112
- MESNE PROFITS**  
 See **EJECTMENT**
- MESSENGER**  
 Court of Appeals 11-204
- METALLURGY**  
 Dentist, examination for license 2-308
- METROPOLITAN POLICE**  
 See **POLICE DEPARTMENT**
- MICHIGAN AVENUE**  
 Abandoned portion, transfer in part to United States Soldiers' Home 7-129  
 Abandonment of certain portion 7-129  
 Extension and widening authorized 7-127 note  
 Plat showing relocation, preparation and recordation 7-130  
 Relocation in part 7-127  
 Relocation, lands transferred to United States Soldiers' Home 7-127  
 Street railway company given easement 7-131  
 Transfer of title to abandoned portion 7-129, 7-130  
 United States Soldiers' Home, vacation of part of grounds authorized 7-128
- MICHIGAN AVENUE VIADUCT**  
 Closing of grade crossing 7-520, 7-522  
 Construction authorized 7-520  
 Division of costs between District and Baltimore and Ohio Railroad 7-520  
 Use by street railway company, payment of share of cost 7-521
- MIDWIFERY**  
 See **HEALING ARTS PRACTICE ACT**  
 Birth reports 6-301—6-304



**MIDWIFERY—Continued**

Sec.

Blindness in infants, preventative treatment	6-201—6-204
Board of Examiners	2-106, 2-113
Number of members	2-106, 2-113
Power to abolish board	2-113
Qualifications of members	2-106, 2-113
Reference of applicants for license to board	2-113
Term of office	2-106, 2-113
Examination as basis for issuing license	2-122
Educational requirements	2-122
Proof required of applicant	2-122
Examination of applicants for license	2-114—2-117
Reciprocity as basis for issuing license	2-121
Relicensing of licensees under prior law	2-120

**MILESTONES**

Removing, penalty	22-3106
-------------------	---------

**MILITARY**See **MILITIA**

Jury service, exemption, exceptions	11-1420
Police Department members, exemption	4-123

**MILITARY ROAD**

Keokuk Street Northwest, name changed	7-107 note
---------------------------------------	------------

**MILITIA**

Active military duty	39-601—39-608
Camp duty	39-607
Causes for excuse from duty	39-604
Drills, parades, encampments	39-601
Drills prescribed	39-602
Interference with militia during	39-606
Leave of absence of Government employee guardists	39-608
Military offenses during, effect	39-601
Parades to have right-of-way	39-605
Rules for parades and encampments	39-606
Subject to superior officers during	39-601
Suppression of riots	39-603
Causes for excuse from duty	39-604
Immunity from liability for acts	39-603
Ordering out militia	39-603
Annual inspections	39-515
Annual muster	39-515
Armament, equipment and supplies	39-501—39-517
Accounting	39-501
Annual inspection	39-515
Armories and their equipment	39-514
Death or desertion of accounting officer	39-509
Appointment of surveying officer	39-509
Duties of surveying officer	39-509
Defective accounts on transfer of property	39-508
Appointment of surveying officer	39-508
Duties of surveying officer	39-508
Desertion of accounting officer	39-509
Determining value of lost equipment	39-503
Distinctive uniforms	39-512
Failure to transfer property	39-507
Appointment of surveying officer	39-507
Duties of surveying officer	39-507
Issued property remains property of United States	39-501

**MILITIA—Continued -**

Sec.

Armament, equipment and supplies—Con.	
Liability of officer or his estate until accounts are found correct	35-510
Liability of officer's estate for lost, injured or destroyed property	39-511
Officers' liability for return of equipment	39-504
Ordnance, clothing, stores, medicine, issuance	39-501
Penalty for conversion	39-505
Penalty for selling or pawning	39-505
Personal liability for equipment	39-503
Purchase of supplies	39-517
Regulations for reissue	39-502
Transfer of property on promotion, retirement or dismissal	39-506
Uniforms, arms, and equipment, issuance	39-501
Armories and their equipment	39-514
Assessors to list persons liable to enrollment	39-103
By-laws of companies, battalions, regiments	39-903
Commander-in-chief	39-112
Commissioned officers	39-201—39-213
Appointment	39-206
Appointments to grade of second lieutenant	39-209
Commanding general	39-201
Appointment by President	39-201
Ranks as brigadier-general	39-201
Tenure	39-201
Date of commissions	39-902
Dismissal	39-214
On conviction of infamous offense	39-214
On sentence of court-martial	39-214
Duties	39-901
Examination for promotion	39-210
Failure because of physical disability, retirement	39-210
Failure on re-examination, discharge	39-210
Failure to appear, re-examination	39-210
Failure to pass, re-examination	39-210
Honorable discharge	39-214
On disbandment of his organization	39-214
On failure to appear before board of examination	39-214
On report of board of examination	39-214
On resignation	39-214
Oaths	39-206
Retirement	39-213
After 10 years' service	39-213
At reaching age of 64	39-213
For physical disability	39-213
Increased rank	39-213
Obligations after retirement	39-213
Privileges after retirement	39-213
Special capability examination	39-212
Board of examination to conduct	39-212
Commanding general's request	39-212
Failure to appear, certificate to President	39-212
Failure to pass, certificate to President	39-212
Staff corps officers	39-207
Staff department officers	39-207
Staff officers	39-202



MILITIA—Continued		Sec.	MILITIA—Continued		Sec.
Commissioned officers—Continued			National Guard		39-106—39-906
Vacancies above grade of second lieutenant, filling		39-208	Consolidating companies below minimum strength		39-111
Courts-martial		39-701—39-709	Disbanding companies below minimum strength		39-111
Compulsory attendance of non-guard witnesses		39-707	Organization		39-107
Courts of inquiry		39-701, 39-702	Units to be maintained, prescribed by President		39-107
Designation		39-701	National Guard Reserve Corps		39-108
Purpose and duties		39-702	Composition		39-108
District Court Marshal to execute warrants		39-709	Organization		39-108
General courts-martial		39-701, 39-703	Naval battalion not affected by militia laws		39-906
Constitution		39-704	Noncommissioned officers		39-301
Jurisdiction		39-704	Appointment		39-301
Limits of punishment		39-704	Discharge of men enlisted as noncommissioned officers		39-301
Ordered by President or commanding general		39-703	Reduction to ranks		39-301
Proceedings in revision		39-704	Noncommissioned staff		39-202
Jurisdiction to be presumed		39-706	Composition		39-202
Military courts designated		39-701	Organizations may own personal property		39-513
Prosecution of members prohibited		39-705	Organizations may sue for injuries to personal property		39-513
Sentences, execution by District Court Marshal		36-708	Organized militia		39-106
Special courts-martial		39-701	Composed of volunteers		39-106
Summary courts-martial		39-701	Designated as National Guard		39-106
Warrant for arrest of absent accused		39-709	Parades to have right-of-way, exceptions		39-605
Witnesses, not members of guard		39-707	Pay and allowances		39-801—39-806
Compulsory attendance		39-707	Annual estimates to be included in District estimates		39-805
Nonresidents		39-707	Deductions for lost property		39-806
Self-incriminating evidence not compellable		39-707	For active service		39-801
Enlisted personnel		39-401—39-405	General expenses of militia		39-802
Discharge, classification		39-403	Musicians		39-803
Discharge without honor, grounds		39-404	Officers' clothing		39-806
Dishonorable discharge, grounds		39-405	Subsistence while on duty		39-804
Enlistment contract and oath		39-402	President to be commander-in-chief		39-112
Extension of terms in event of emergency		39-401	Regulations, company, battalion, regimental rules		39-903
National Guard enlistment period		39-401	Regulations of commanding general		39-905
National Guard enlistments extended in emergencies		39-401	Rules for parades and encampments		39-606
National Guard re-enlistment periods		39-401	Staff corps officers		39-207
Term of enlistment		39-401	Examination		39-207
Term of re-enlistments		39-401	Nomination by commanding general		39-207
Enrolled militia		39-104, 39-105	Staff department officers		39-207
Duties		39-104	Examination		39-207
Ordering into service		39-105	Nomination by commanding general		39-207
Enrollment		39-101	Staff officers		39-202
Assessors to list persons liable		39-103	Adjutant-general		39-202
Persons excepted		39-101	Army officer may be detailed as		39-204
Persons exempted		39-102	Major's ranking		39-202
Persons subject		39-101	Retired army officer may be detailed as		39-204
Examinations			Chief engineer, a major		39-202
For promotion of officers		39-210	Chief of ordnance, a major		39-202
For promotion to second lieutenant		39-211	Commissary-general, a major		39-202
For staff corps officers		39-207	Four aides-de-camp, captains		39-202
For staff department officers		39-207	Inspector-general, a major		39-202
Special examination concerning officer's capability		39-212	Inspection-general of rifle practice, a major		39-202
Immunity of guardsmen from civil or criminal prosecution for acts done in discharge of military duty		39-705	Judge-advocate general, a major		39-202
Miscellaneous provisions		39-901—39-906	Qualifications		39-203
			Quartermaster-general, a major		39-202
			Surgeon-general, a major		39-202



MILITIA—Continued		Sec.	MILK AND MILK PRODUCTS—Continued		Sec.
Staff officers—Continued			Milk, cream, and ice cream—Continued		
Tenure		39-203	Rules and regulations to protect supply, publication		33-307
Vacancies		39-203	"Skimmed milk" defined		33-313
System of discipline and field exercise		39-904	"Skimmed milk" to be labelled		33-310
Use of appropriations		39-806	Standards		33-313
Use of fines		39-806	Standards for sale		33-314
Use of Washington Barracks		39-516			
MILK AND MILK PRODUCTS			MINARETS		
See FOOD AND DRUGS.			Height, fireproof construction		5-405
Milk and cream, standard container		10-114	MINERAL WATER		
Cap or stopper of bottle or jar		10-114	Bottles for, registration		48-101
"False measures" defined		10-114	Unauthorized use of registered bottles, penalty		48-102
Regulations concerning bottles or jars		10-114			
Milk-beverage containers, registration		48-301—48-307	MINIMUM WAGE LAW		
Milk containers, registration of trade marks and trade names		48-201—48-211	Action on conference report by board		36-411
Milk, cream, and ice cream		33-301—33-322	Appeals from board on questions of law		36-416
Application of regulations to States shipping into District		33-321	Approval of Conference report		36-411
"Certified milk" defined		33-313	Hearings		36-411
"Cream" defined		33-313	Publication of notice of hearing		36-411
Dealers to post names of suppliers		33-309	Authority of board		36-407
Definitions		33-313	"Board" defined		36-401
Factory license		47-2327	Civil action to recover minimum wage		36-421
General distributors to keep list of suppliers		33-309	"Commissioners" defined		36-401
Grade to be labelled		33-314	Conference on inadequate wages		36-409
"Ice cream" defined		33-313	Appointment of members		36-409
Ice cream parlor, license		47-2327	Report of findings		36-410
Illegal importation, seizure, destruction		33-306	Separate inquiries		36-414
Importation of inspected products		33-304	Decisions of facts by board final		36-416
Inspectors, limit on automobile allowance		33-322	Definitions		36-401
Interference with health officer		33-316	Determining minimum wages for minors		36-413
Licensed deliverers to receive only from licensed shippers		33-318	Discrimination against employee who testifies, penalty		36-418
Milk-beverage containers, registration		48-301—48-307	Employers responsible for violations by their agents		36-419
Milk containers, registration of trade marks and trade names		48-201—48-211	Hearings before board		36-404
"Milk" defined		33-313	Investigations into compliance with standards		36-415
Milk trucks and wagons, name of owner		33-308	Jurisdiction in police court		36-420
Names of shippers to be posted in receiving stations		33-317	Licenses to work for less than minimum		36-412
Names of suppliers to be posted		33-317	Minimum wage board		36-402
Pasteurization under direction of health officer		33-315	Annual report		36-406
"Pasteurized" defined		33-313	Members		36-402
"Pasteurized milk" defined		33-313	Officers		36-403
Penalty for violating sections		33-301—33-319	"Minor" defined		36-401
Pure, clean and wholesome only		33-301	"Occupation" defined		36-401
To be held in District		33-301	Penalties for violations		36-417
To be imported		33-301	Regulations made by board		36-405
To be offered for sale		33-301	Standards of wages to be declared		36-408
"Raw milk" defined		33-313	Title and purpose		36-422
"Reconstructed cream" defined		33-313	"Woman" defined		36-401
"Reconstructed cream" to be labelled		33-310			
"Reconstructed milk" defined		33-313	MINISTERS		
"Reconstructed milk" to be labelled		33-310	See CLERGY		
Requirements for dairies		33-302, 33-303	MINORS		
Restrictions on sales and use before and after parturition		33-311	See CHILD LABOR; CHILDREN; EMINENT DOMAIN; GUARDIAN AND WARD; JUVENILE COURT; JUVENILE OFFENDERS; PARENT AND CHILD		
			Adoption		16-201—16-207
			Alcoholic beverages		
			Misrepresenting age to obtain, penalty		25-130
			Sales to, penalty		25-121



<b>MINORS—Continued</b>		Sec.	<b>MISSIONARY ASSOCIATIONS</b>	Sec.
Attorneys for	13-105		Incorporation	29-601
Appointment by court	13-105		<b>MISTAKE</b>	
Compensation	13-105		Cancellation of negotiable instrument, effect, burden of proof	28-805
Boys under 17, commitment to National Training School for Boys	32-815		Warehouse receipts, negotiation, effect	28-2011
Child labor	36-201—36-227		<b>MISTAKES IN PLEADINGS AND PROCEEDINGS</b>	
Civil disabilities, not to suffer	11-915		See <b>PLEADINGS</b>	
Cosmetologists, minimum age	2-1308		Found after verdict	13-315
Custodians of children	11-918		Jurisdiction mistaken, transfer of cause	13-215
Detention home, committing to	11-912		Mistake in pleadings, as cause for reversal	13-310
Examination by psychologist or physician in Juvenile Court	11-926		<b>MONEY</b>	
Exchange of property	21-209		Executions on money	15-211
Executor or administrator, right to act as	20-102		<b>MONEY LENDING</b>	
Girls under 18, custody of Association for Works of Mercy	32-101		See <b>PETTY LOANS</b>	
Guardians ad litem, appointment	13-105		<b>MONOPOLY</b>	
Guardianships	21-101—21-130		Cooperative association operations	29-842
Infant mortgagee, conveying	45-608		<b>MONROE STREET VIADUCT</b>	
Infant trustee, conveying	45-608		Use by street railway, payment of share of cost	7-510
Insanitary buildings, ownership, condemnation, appointment of guardian	5-609		<b>MONTGOMERY BLAIR PORTAL</b>	
Juvenile Court jurisdiction	11-907		Sixteenth Street and adjacent park reservation, name changed	7-107 note
Lease of infant's estate, consent	21-211		<b>MONTGOMERY COUNTY, MARYLAND</b>	
Leases	45-927—45-930		Garbage incinerators of District, use, terms and conditions	6-511
Marriage, when consent of parent or guardian required	30-111		<b>MONTROSE PARK</b>	
Married women under 21, sale or conveyance of property	30-201		Appropriations for maintenance and improvement	8-113
Mortgage of infant's estate	21-212		Partial transfer for highway purposes	7-1201 note
Necessaries, Uniform Sales Act	28-1102		Part of park system of District	8-113
Negotiable instrument, indorsement, effect	28-123		<b>MONUMENTS</b>	
Pharmacist, minimum age	2-602		Theodore Roosevelt Memorial	8-166
Poisons, sale to minors under 18			<b>MORAL TURPITUDE</b>	
Prohibited	2-601		Ground for divorce	16-403
Restricted	2-612		Ground for legal separation	16-403
Private institution, committing to	11-915		<b>MORPHINE</b>	
Property subject to encumbrances	21-202		See <b>NARCOTIC DRUGS</b>	
Property subject to executory contract	21-203		Exempted medical preparations	33-410
Religious faith considered in placements	11-918		Included in term "opium"	33-401
Sale of infant's principal	21-201		Sale by manufacturer or wholesaler, written orders	33-405
Sale of partial estate in particular property	21-210		Sale, prescription	2-610, 2-611
Sale of property held jointly or in common	21-213		<b>MORTGAGE LOAN COMPANIES</b>	
Sale or exchange of infant's realty	21-204		See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>	
Bill to be filed	21-204		<b>MORTGAGES</b>	
Decree	21-207		See <b>EJECTMENT</b>	
Disposition of proceeds	21-208		Acknowledgment	45-601
Parties	21-205		Conveyance by non compos mentis mortgagee	45-620
Proof	21-206		Deficiency decree in personam on sale of property	45-616
Terms of sale	21-208		Ejectment by mortgagee, release on payment into court	45-605
Sales to under Uniform Sales Act	28-1102		Ejectment, mortgagee's failure to pay rents and costs in	16-532
Service of process	13-105		Estate of mortgagee, construing	45-603
Statute of frauds effects, ratifications of promise to pay	12-306			
Subject to Juvenile Court statute	11-907			
Suits by next friend	21-117			
Work or vacation permits	36-208—36-227			
<b>MINOR STREET</b>				
Definition	7-301			
<b>MISDEMEANORS</b>				
Criminal Court, jurisdiction	11-322			
<b>MISPRISIONS</b>				
By jailers, penalty	22-2602			



**MORTGAGES—Continued**

Sec.

Execution	45-601
Expense and commission on sale	45-618
Foreclosure	
Decree without hearing on motion of defendant	45-606
Defenses against	45-612
Form	45-301
Infant mortgagee	
Compelling conveyance by	45-609
May convey under court order	45-608
Instruments secured by, negotiable	28-106
Joint mortgagees, survival of title and trust	45-604
Married woman's right to execute	30-201
Mortgaged goods, removing from District, penalty	22-1209
Mortgagee	
Decease, appointment of trustee	45-611
May redeem prior mortgage	45-610
Takes qualified fee simple	45-603
Payment into court, when not permitted	45-607
Prior mortgage, redemption by subsequent mortgagee	45-610
Recording	45-601
Redemption by subsequent mortgagee	45-610
Release after death of mortgagee	45-619
Release on payment into court after suit	45-605
Replacement of deceased trustee	45-613
Terms of sale of property	45-615

**MOTION PICTURE THEATERS**

License fee	47-2320
Prerequisites to license	47-2302
Revocation of license for violation of decency regulations	47-2302

**MOTIONS**

See PLEADINGS

**MOTOR CARRIERS FOR HIRE**

Power to fix rates	1-222, 1-223
--------------------	--------------

**MOTORCYCLES**

See MOTOR VEHICLES

**MOTOR FUEL**

Licenses for sale and storage locations	47-2314
Approval of fire marshal	47-2314
Fee	47-2314

**MOTOR FUEL TAX**

Accepting fuel without itemized statement, liability for tax	47-1908
"Commissioners" defined	47-1902
Construction	47-1914, 47-1915
Personal property tax on motor vehicles not affected	47-1915
Public hackers license law not affected	47-1914
"Construction" defined	47-1902
Definitions	47-1902
Disposition of paving revenue	47-1918
"Distributor" defined	47-1902
Distributors	47-1905
Rendition of invoice except on retail sales	47-1905
Exported fuel, exempted from tax	47-1909
Fuel not used for motor vehicles, refund of tax	47-1910

**MOTOR FUEL TAX—Continued**

Sec.

Fuel used for agricultural tractor, refund of tax	47-1910
Fuel used for aircraft, refund of tax	47-1910
Fuel used for cleaning or dyeing, refund of tax	47-1910
Fuel used for motorboats, refund of tax	47-1910
Fuel used for stationary gas engine, refund of tax	47-1910
"Highways" defined	47-1902
"Importer" defined	47-1902
Importers	47-1903
Application for license, contents	47-1903
Bond	47-1903
Failure to make monthly report, additional amount	47-1903
Inspection of records	47-1907
Issuance of license after revocation	47-1903
Issuance of license by assessor	47-1903
License fee	47-1903
License required	47-1903
Monthly report, contents and verification	47-1904
Rendition of invoice except on retail sales	47-1905
Revocation of license	47-1903
Time for tax payment	47-1906
"Improvement" defined	47-1902
Invoice requirements	47-1905
"Maintenance" defined	47-1902
"Motor vehicle" defined	47-1902
"Motor vehicle fuels" defined	47-1902
Payment	47-1906
"Person" defined	47-1902
Proceeds used for roadways	47-1917-47-1919
Assessments for such roads, continuation	47-1917
Continuing charge for uncompleted projects	47-1919
Disposal of assessment proceeds	47-1918
Prosecution of violators	47-1913
Rate	47-1901
"Reconstruction" defined	47-1902
Refunds	47-1910
Application for, time limit	47-1910
Grounds for refunds	47-1910
Payment by collector of taxes	47-1910
Refund account	47-1910
Regulations and fines	47-1916
Sales by United States agencies taxable	47-1912
Special account	47-1901
Street paving assessments	47-1917
Uncompleted paving projects	47-1919
Use of proceeds	47-1901
Expenses of director of vehicles and traffic	47-1901
Expenses of police control of traffic, limitation	47-1901
Public highways, construction and maintenance	47-1901
Violations, penalty	47-1911

**MOTOR VEHICLES**

See MOTOR FUEL TAX; PASSENGER MOTOR VEHICLES FOR HIRE



**MOTOR VEHICLES—Continued**

Sec.

Abandoned vehicles, accumulation, abatement as nuisance	5-504, 5-505
Appointment of director of vehicles and traffic	40-603
Cars involved in accidents, garagemen to report	40-611
Definitions	40-101
Dealer	40-101
Director	40-101
Farm tractor	40-101
Motor vehicle	40-101
Owner	40-101
Person	40-101
Pneumatic tire	40-101
Public highway	40-101
Trailer	40-101
Department of vehicles and traffic	
Record of sight-seeing bus drivers	47-2331
Record of taxicab and hack drivers	47-2331
Director of vehicles and traffic	
Attorney for service of process for non-resident owners of vehicles operated in District	40-403
Furnishing certificate of operating record, fee	40-406
Use of motor fuel tax proceeds for expenses	47-1901
District of Columbia Traffic Act	11-601, 11-616, 11-617, 11-621, 11-623, 11-1407, 40-301—40-303, 40-601—40-603, 40-605, 40-609, 40-610, 40-612, 40-614, 40-615
Citing	40-601
Definitions	40-602
Driving while drugged, conviction, need for financial proof	40-402
Driving while drugged, forfeiting bond, need for financial proof	40-402
Driving while drunk, conviction, need for financial proof	40-402
Driving while drunk, forfeiting bond, need for financial proof	40-402
Failure to pay accident judgments within 30 days, need for financial proof	40-403
Fleeing from scene of accident	40-609
Foreign bond forfeiture in drugged driving case, need for financial proof	40-402
Foreign bond forfeiture in drunken driving case, need for financial proof	40-402
Foreign conviction for driving while drugged, need for financial proof	40-402
Foreign conviction for driving while drunk, need for financial proof	40-402
Inspection	40-201—40-207
Appropriations for facilities for inspections	40-203
Fee	40-201
Government owned vehicles exempt from fee	40-204
Payment of inspection fee to collector	40-202
Regulations, Commission's authority	40-207
Uninspected vehicles, refusal of registration	40-205
Unsafe vehicles, refusal of registration	40-205
Intoxicated persons, operation by	25-127

**MOTOR VEHICLES—Continued**

Sec.

Joint board	
Composition	40-603
Creation	40-603
Reference of regulations regarding public utilities to	40-603
Leaving scene of accident in foreign jurisdiction, conviction, need for financial proof	40-402
Leaving scene of accident in foreign jurisdiction, forfeiting bond, need for financial proof	40-402
Leaving scene of personal injury accident, conviction, need for financial proof	40-402
Leaving scene of personal injury accident, forfeiting bond, need for financial proof	40-402
Liens, certificate to be mailed to holder of first lien	40-706
Liens on motor vehicles and trailers	40-701—40-715
Absence of liens to be shown on certificate	40-706
Appropriations	40-715
Assignment	40-708
Certificate to holder of first lien	40-708
Entry and recording	40-708
Entry where certificate is not available	40-709
Form and requirements	40-708
"Certificate" defined	40-701
Collection of fees on entry	40-706
Definitions	40-701
"Director" defined	40-701
Effect of liens not entered on certificate of title	40-702
Entering on certificate	40-702
Entry by Recorder on certificate	40-703
Entry of liens	
On application for certificate	40-706
On previously issued certificate	40-707
Shown on application, procedure	40-706
Entry where certificate is not available	40-709
False statements as to, penalty	40-714
Instrument creating, form and requirements	40-704
"Instrument" defined	40-701
"Lien" defined	40-701
"Lien information" defined	40-701
Manner of entry on certificate of title	40-703
"Owner" defined	40-701
"Person" defined	40-701
Place and method of recording	40-713
Possession of certificate	40-710
Priority of liens	40-703
Prior liens	40-702
"Recorder" defined	40-701
Recording fees	40-712
Requirements for entering on certificates	40-704
Satisfaction	40-710, 40-711
Duties of lienee	40-710
Duty of Recorder	40-711
Where certificate is lost	40-711
To be kept in director's office	40-705
To be shown on application for certificate	40-706
Violations of law, penalty	40-714



MOTOR VEHICLES—Continued	Sec.	MOTOR VEHICLES—Continued	Sec.
Loitering by public cabs	40-617	Owners' Financial Responsibility Act—Con.	
Milk trucks	33-308	Nonresident owners	40-402, 40-403
Motor fuel tax	47-1901—47-1919	Operation in District equivalent to appointment of director as attorney for service of process	40-403
Motor vehicles for hire, Employers' Liability Act	44-401—44-405	Unsatisfied judgment, proof of financial responsibility	40-403
Nonresidents, operation in District equivalent to appointment of director as attorney for service of process	40-403	Withdrawal of privilege of operating car, unsatisfied judgment,	40-403
Operators' permits	40-301—40-303	Plaintiff not prevented from using other processes	40-415
Applications	40-301	Police to obtain suspended certificates and return to director	40-408
Contents	40-301	Proof for chauffeur or member of owner's family	40-402
Denial	40-301	Proof of ability to respond in damages	40-404
Review	40-302	Bond of surety company as	40-404
Writ of error to Court of Appeals	40-302	Certificate of insurance carrier as	40-404
Examination	40-301	Commissioners may cancel or return after 3 years	40-409
Fee	40-301	Deposit of \$11,000 with District Court clerk as	40-404
Issuance	40-301	Effect of failure to replace canceled or expired insurance or bond	40-405
New permit after revocation	40-302	Forgery, penalty	40-410
Nonresidents' exemption	40-303	Individual sureties' bond as	40-404
Examination, when required	40-303	Notice to Commissioners of cancellation of insurance or bond	40-405
Penalty for violation	40-303	Substitution of types of proof	40-409
Period of exemption	40-303	Proof of ownership prima facie evidence of operators' authority from owner	40-403
Operating after revocation or suspension, penalty	40-302	Proof to be submitted to Commissioners of District	40-402
Penalty for operating without permit	40-301	Return of suspended certificates to director required, penalty	40-408
Period for which issued	40-301	Rules and regulations, Commissioners of District to make	40-414
Refusal	40-301	Satisfaction of judgment, what constitutes	40-403
Revocation and suspension	40-302	Saving clause on constitutionality	40-416
Nonresidents' right to drive in District	40-302	Service of process on non-resident owners	40-403
Operating after revocation or suspension, penalty	40-302	Traffic laws not repealed	40-401
Review	40-302	Parking meters	40-616
Writ of error to Court of Appeals	40-302	Parks, regulations, enforcement by director	8-109
To be in possession of operator	40-301	Passenger motor vehicles for hire, insurance required	44-301
Owners' Financial Responsibility Act	40-401—40-416	Passenger vehicles for hire, licenses	47-2331
Causes for suspension of operators' permit and registration	40-402, 40-403	Public-owned vehicles	
Certificate of operating record, director to furnish	40-406	Application of provision to District of Columbia	40-503
Coverage of liability policy	40-412	Fire and police motor vehicles not to be transferred to other branches of government	40-504
Definitions	40-412, 40-413	Marking	40-501
Evidence of ability to respond in damage, director to furnish to injured persons	40-407	Uniform color, lettering	40-501
Exemption of those required by law to make other provisions for damages	40-410	Vehicles for personal or official use, restrictions	40-502
"Motor-vehicle liability policy" defined	40-412	Registration	40-101—40-105
Need for responsibility proof	40-402	Application	40-102
Convicted of drugged driving, in or out of District	40-402	Application to show liens	40-706
Convicted of drunken driving in or out of District	40-402	Authority of Commissioners of District	40-102
Conviction for leaving scene of accident, in or out of District	40-402	Certificate	40-102
Failure to pay judgments in accident cases within thirty days	40-402	"Dealer" defined	40-101
Forfeiting bond in drugged driving case, in or out of District	40-402		
Forfeiting bond in drunken driving case, in or out of District	40-402		
Judgments and orders to be certified to Commissioners of District	40-402		



**MOTOR VEHICLES—Continued****Registration—Continued**

Definitions	40-101
"Director" defined	40-101
Expiration	40-102
"Farm tractor" defined	40-101
Fees, classification and use of proceeds	40-103
Identification tags	40-102
"Motor vehicle" defined	40-101
Operating while registration is revoked, penalty	40-206
Operating while registration is suspended, penalty	40-206
Operation without registration prohibited, exceptions	40-102
Other tax requirements not affected	40-105
"Owner" defined	40-101
Permitting operation while registration is suspended or revoked	40-206
"Person" defined	40-101
"Pneumatic tire" defined	40-101
Power of Commissioners to make rules and regulations not affected	40-105
Prohibited acts	40-104
False statements in registration	40-104
Operation of motor vehicle or trailer without certificate of registration	40-104
Operation of motor vehicle or trailer without tags	40-104
Operation of unregistered motor vehicle or trailer	40-104
Owner permitting unlawful operation	40-104
Penalties	40-104
"Public highway" defined	40-101
Refusal to register uninspected vehicles	40-205
Refusal to register unsafe vehicles	40-205
Suspension and revocation, uninspected vehicles	40-205
Suspension and revocation, unsafe vehicles	40-205
Tags not to be issued until tax is paid	47-1210
"Trailer" defined	40-101
Uninspected vehicles	40-205
Unsafe vehicles	40-205
Regulation of traffic	40-601—40-617
Rental agency license	47-2332
Repair establishment, license	47-2334
Service of process on nonresident owners	40-403
Service stations, license	47-2334
Smoke Prevention Law	6-801—6-804
Taxation	47-1210
Taxicabs, insurance required	44-301
Traffic regulations	40-601—40-617
Citing act	40-601
Commissioners authorized to make	40-603
"Commissioners" defined	40-602
"Court" defined	40-602
Definitions	40-602
Director of vehicles and traffic	40-603
"District" defined	40-602
Driving while drunk	40-609
Driving while under the influence of intoxicants	40-609
Fleeing from scene of accident	40-609

Sec.

**MOTOR VEHICLES—Continued****Traffic regulations—Continued**

Inclusion of negligent homicide in man-slaughter	40-607
Joint board, reference to	40-603
Loitering by public cabs, penalty	40-617
"Motor vehicle" defined	40-602
Negligent homicide	40-606
"Park" defined	40-602
Parking meters	40-616
Park traffic not affected	40-613
"Person" defined	40-602
"Public highway" defined	40-602
Repeal and saving clauses, traffic act	40-614
Saving clause an amendment	40-609
Separability clause, Traffic Act	40-615
Speeding	40-605
"This chapter" defined	40-602
"Traffic" defined	40-602
Use or possession of smoke screen device	40-610
"Vehicle" defined	40-602
Unauthorized use, penalty	22-2204

Sec.

**MOVING-PICTURE SHOWS**

Inspection, fees fixed by Commissioners	5-316
---	-------

**MOVING VANS**

License	47-2333
Stands	47-2333

**MOZART PLACE**

Messmore Place, name changed	7-107 note
------------------------------	------------

**M STREET**

Abandonment in part	7-123 note
---------------------	------------

**MUNICIPAL ARCHITECT**

Construction of municipal buildings, superintendent	1-306
Corporation or supervision of corporation of plans for municipal buildings	1-306
Duties	1-306
Repair and improvement of buildings belonging to District	1-306
Serve under direction of Engineer Commissioner	1-306

**MUNICIPAL BUILDING**

Policeman, detailing as watchman prohibited	4-111
---	-------

**MUNICIPAL CENTER**

Acquisition of land authorized, location	9-201
Buildings on grounds, rental	9-202
Eminent domain proceedings, immediate possession of land	9-201
Streets and alleys, closing authorized	9-201

**MUNICIPAL CORPORATIONS**

District of Columbia	1-102
----------------------	-------

**MUNICIPAL COURT****See ATTACHMENT AND GARNISHMENT**

Appeals	11-723
Bills of exceptions	11-723
Court of Appeals	11-723, 17-104
No appeal to District Court	11-723
Assignment of deputy marshals	11-721
Assistant clerk	
Appointment and tenure	11-708
Bond	11-709



MUNICIPAL COURT—Continued		Sec.	MUNICIPAL COURT—Continued		Sec.
Assistant clerk—Continued			Jurors		11-715
Power to administer oaths		11-712	Additional		11-716
Signing clerk's name, form		11-711	Compensation		11-716
Attachment		11-733	How drawn		11-716
Claim against property	11-745—	11-747	Jury trial		11-715
Docketing, trial		11-745	Conduct		11-715
Judgment		11-746	Right to, when		11-715
Replevin		11-747	Nonresident plaintiffs		11-719
Trial of right to property, notices		11-744	Security for costs, motion to require		11-719
Bill of exceptions, civil cases, jury trials		11-320	Security for costs unnecessary		11-719
Charges against judge, hearing in District Court		11-312	Nonresident witnesses		11-741
Clerk			Affidavit showing material knowledge		11-741
Appointment and tenure		11-708	Commission to examine		11-741
Bond	11-701—	11-709	Written interrogatories to be filed		11-741
Court to prescribe further duties		11-714	Paupers, costs		11-720
Docket to be kept		11-713	Payment of money into court		11-734
Failure to keep docket		11-713	Power to make rules		11-722
Fees, to receive, care for, deposit, account		11-710	Power to set fees and costs		11-722
Judgments, to furnish copies		11-713	Process, service		11-748
Power to administer oaths		11-712	Quarters		11-701
Return of unearned fees		11-710	Replevin	11-725—	11-732
To sign process		11-711	Affidavit		11-725
Unclaimed funds		11-710	Declaration, form of		11-725
Contempt, penalties		11-740	Defendant not found, publication		11-727
Costs, paupers		11-720	Measure of damages for defendant		11-732
Court of record		11-702	Measure of damages for plaintiff		11-731
Deposits for jury trial, when earned		11-749	Motion for return of property		11-730
Docket, contents		11-713	Pleading, not guilty or special plea		11-728
Equitable defenses in actions at law		13-214	Property not found, procedure		11-726
Executions		11-724	Quashing writ		11-729
Fees, payable into Treasury		47-126	Renewal of writ		11-726
Forcible entry and detainer	11-735—	11-739	Retention by marshal		11-729
Inferior Court of District		11-101	Return of property		11-729
Interest on judgments		11-724	Sufficiency of undertaking		11-729
Judges		11-701	Undertaking		11-725
Appointment by President		11-701	Satisfaction of judgment, receipt of plaintiff		11-742
Apportionment of business		11-706	Seal		11-702
Authority to take acknowledgment of deeds		45-402	Small claims and conciliation branch		11-801
Certification of cases to Small Claims and Conciliation Branch		11-810	Action, how commenced		11-805
Deaf and dumb persons, reporting to the president of Columbia Institution for the Deaf		31-1015	Arbitration		11-804
Issuing warrants returnable to police courts		11-705	Conciliation		11-804
Number		11-701	Definitions		11-802
Oath		11-701	Branch		11-802
Qualifications		11-701	Clerk		11-802
Record of warrants		11-705	Court		11-802
Transfer to Municipal or Juvenile Courts		11-707	Judge		11-802
Warrants free of charge		11-705	Disposal of actions		11-808
Judgments	11-718, 11-724		Docket, separate		11-806
Docketing in District Court clerk's office	11-718, 11-743		Enforcement of judgments		11-819
Duration		11-718	Establishment		11-801
Execution		15-209	Fees and costs, waiver		11-807
Stay of execution, rules		11-748	Fees barred		11-804
When a lien		11-718	Hearing, date of		11-805
Jurisdiction		11-703	Judges		11-803
Exclusive		11-703	Rotation		11-803
Limitations		11-703	Tenure		11-803
Trespass where title is in issue		11-704	Judgment		11-811
			Judgment by default, when		11-805
			Judgment for wages		11-812
			Jurisdiction		11-804
			Exclusive, where		11-804
			Limitations		11-804
			Jury trials, assignment to regular branches		11-818



**MUNICIPAL COURT—Continued**

	Sec.
Small claims and conciliation branch—Con.	
Notice	11-805
Pre-trial settlement	11-808
Procedure	11-808
Record, clerk to keep	11-813
Rules of practice	11-814
Rules of procedure	11-815
Saving clause	11-820
Service	11-805
Sessions	11-816
Set-off or counterclaim	11-809
Pleading	11-809
Retention of jurisdiction	11-809
Statement of claim, form	11-805
Statement of claim, verification	11-805
Stay of execution	11-811
Instalment payment	11-811
Vacating	11-811
Writ of error to United States Court of Appeals	11-817
Summons, forcible entry and detainer	11-735
Trial by court	11-717
Exemptions	11-717
Findings, general, special	11-717
Witnesses, attendance compelled	11-740

**MUNICIPAL FISH WHARF AND MARKET**See **FISH WHARF AND MARKET****MUNICIPALITY OF THE DISTRICT OF COLUMBIA**

See respective subject headings

**MUNICIPAL LODGING-HOUSE**See **CHARITABLE INSTITUTIONS****MUNICIPAL ORDINANCES AND REGULATIONS**

Admissibility in evidence of certified copy	14-406
Jurisdiction of Police Court	11-602
Orders of Public Utilities Commission take precedence	43-209
Sale and exchange of copies	49-110

**MURDER**See **MANSLAUGHTER**

First degree	22-2401, 22-2402, 22-2404
Obstructing train or trolley, killing by	22-2402
Perpetrating or attempting to perpetrate certain crimes	22-2401
Poison, killing through	22-2401
Premeditated malice, killing with	22-2401
Punishment	22-2404
Purposeful killing	22-2401
Second degree	22-2403, 22-2404
Punishment	22-2404

**MUSIC**

Corporations for	29-601
------------------	--------

**MUTUAL IMPROVEMENT SOCIETIES**

Incorporation	29-601
---------------	--------

**MUTUAL SAVINGS BANKS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS**

Excise tax	47-1703
------------	---------

**MUZZLES**

Dogs, power of Commissioners to require muzzling	1-230
--	-------

**NAMES**See **ASSUMED NAME**

Adoption proceedings, names given in	16-205
Change of	16-1101—16-1103
By charitable, educational, and religious associations	29-604
Decree	16-1103
Notice, publication	16-1102
Petition, contents	16-1101
Corporations, change of name	29-103
Highways, power of Commissioners to name or rename	7-106, 7-107
Jury box, names in	11-1411
Maiden or prior name restored in divorce decree	16-414
Misspelled on indorsement to negotiable instrument	28-314
Misspelling payee's name on negotiable instrument	28-314
Mutual fire, casualty, and marine insurance companies	35-1328
Partnership	41-117, 41-119
Limited partnership, for conduct of	41-117
Special partner's, use of, effect	41-119
Pleadings, use in	13-203
Reciprocal fire, casualty, and marine insurance companies	35-1328
Signing by mark	1-315
Streets and other ways	7-106, 7-107
Conflicting names, change by Commissioners	7-106
Trade names	48-101—48-403
Use of name "cooperative"	29-837

**NARCOTIC DRUGS**See **FOOD AND DRUGS**

Administering, unauthorized, is unlawful	33-402
Apothecaries to keep prescribed records	33-411
"Apothecary" defined	33-401
Authorized uses	33-407
"Board of Pharmacy" defined	33-401
Board of Pharmacy to license manufacturers	33-403
Board of Pharmacy to license wholesalers	33-403
"Cannabis" defined	33-401
"Coca leaves" defined	33-401
Compounding, unauthorized, is unlawful	33-402
Construction of statute	33-425
Control, unauthorized, is unlawful	33-402
Conviction of violating narcotic law, notice to licensing board	33-418
Corporations exempted	33-415
Definitions	33-401
"Dentist" defined	33-401
Dentists to keep prescribed records	33-411
"Dispense" defined	33-401
Dispensing, unauthorized, is unlawful	33-402
Disposal of forfeited drugs	33-417
Divulging record information	33-419
Enforcement	33-422
Exempted preparations, conditions	33-410



NARCOTIC DRUGS—Continued		NARCOTIC DRUGS—Continued	
	Sec.		Sec.
False or forged labels	33-420	Unlawful acts	33-402
False or forged prescriptions	33-420	Administering, unauthorized	33-402
False or forged written orders	33-420	Compounding, unauthorized	33-402
False personation in procuring	33-420	Control over narcotics, unauthorized	33-402
False statement in procuring	33-420	Dispensing, unauthorized	33-402
"Federal Narcotic Laws" defined	33-401	Manufacture, unauthorized	33-402
Forfeiture by unlawful possession	33-417	Possession, unauthorized	33-402
"Hospital" defined	33-401	Prescribing, unauthorized	33-402
Information divulged to physician in obtain- ing, not privileged communication	33-420	Sale, unauthorized	33-402
Inspection of records	33-419	Use of official written orders	33-405
Labels	33-412	Vendors of exempted preparations to keep prescribed records	33-411
"Laboratory" defined	33-401	"Veterinarian" defined	33-401
"Lawful possession" defined	33-406	Veterinarians to keep prescribed records	33-411
Licenses, qualifications	33-404	"Wholesaler" defined	33-401
To whom prohibited	33-404	Wholesalers to be licensed	33-403
"Manufacturer" defined	33-401	Wholesalers to keep prescribed records	33-411
Manufacturers to be licensed	33-403		
Manufacturers to keep prescribed records	33-411	NATIONAL AIRPORT	
Manufacturer, unauthorized, is unlawful	33-402	See AIRPORT	
"Narcotic drugs" defined	33-401		
Obtaining unlawfully	33-420	NATIONAL BANKS	
"Official written order" defined	33-401	See BANKS AND OTHER FINANCIAL INSTITUTIONS	
"Opium" defined	33-401	Excise tax	47-1701
Paregoric	33-410		
Penalties	33-423	NATIONAL CAPITAL PARK AND PLAN- NING COMMISSION	
"Person" defined	33-401	See PARKS AND PLAYGROUNDS	
Persons exempted	33-415	Abandonment or readjustment of streets, ap- proval of plat	7-113
"Physician" defined	33-401	Abolition of National Capital Park Commis- sion	8-101
Physicians to keep prescribed records	33-411	Acquisition of land for park and playground purposes	8-102—8-106
Places where drug addicts resort or purchase declared common nuisances	33-416	Alley dwellings, slum-clearance plans and plats, approval	5-104
Possession by individual, when authorized	33-413	Annual report to Congress	8-107
Possession, unauthorized, is unlawful	33-402	Budget estimate	8-107
Prescribing, unauthorized, is unlawful	33-402	Citizen members	8-101
Prescriptions not to be refilled	33-403	Congressional member	8-101
Professional use, return of unused drugs	33-409	Cooperation with Maryland and Virginia	8-101
Prosecutions	33-421	Creation	8-101
Barred by acquittal under Federal nar- cotic laws	33-424	Designation of member of Zoning Advisory Council	5-417
Barred by conviction under federal nar- cotic laws	33-424	Duties enumerated	8-101
Exceptions, burden of proof on defendant	33-421	Engineers, architects, technical experts and others, right to employ	8-101
Excuses, burden of proof on defendant	33-421	Executive and disbursing officer	8-101
Exemption, burden of proof on defendant	33-421	Ex-officio members	8-101
Proviso, burden of proof on defendant	33-421	Federal public buildings, approval of plans	5-423
Provisions severable	33-425	Garbage reduction sites, approval	6-505
Record of forfeited drugs	33-417	Lease of lands and buildings pending need for use	8-105
Records, keeping, form and preservation	33-411	Members of commission	8-101
"Registry number" defined	33-401	Members serve without compensation	8-101
Rules and regulations	33-405	New highway plans, approval	7-122
Sale, barter or exchange without written order	33-405	Permanent Highway Plan, approval	7-109
"Sale" defined	33-401	Philadelphia, Baltimore, and Washington Railroad Company, branch tracks or sidings, construction, approval	7-1218
Sale on written orders, vendees	33-406	Plats of restricted areas, preparation	5-411
Sales by apothecaries	33-408	Purposes in creating commission	8-101
Savings clause an unconstitutionality	33-425	Qualification of appointive member	8-101
Search warrants	33-414	Readjustment of streets and ways, recommen- dation	7-401
Suspension and revocation of licenses	33-404		
Unauthorized sales declared unlawful	33-402		
Uniform law	33-401—33-425		



**NATIONAL CAPITAL PARK AND PLANNING COMMISSION—Continued**

	Sec.
Representation on Board of Zoning Adjustment	5-420
Sale of land belonging to District, approval	9-301
Sale of lands by Secretary of Interior, approval	9-304
Term of office of appointive members	8-101
Theodore Roosevelt Memorial, approval of plans	8-166
Title to land in dispute, approval of settlement	8-104
Vacancies filled for unexpired term	8-101

**NATIONAL COMMISSION OF FINE ARTS**

Theodore Roosevelt Memorial, approval of plans	8-166
--	-------

**NATIONAL EDUCATION ASSOCIATION**

Property exempted from taxation	47-829
---------------------------------	--------

**NATIONAL GUARD**See **MILITIA**

Active military duty	39-601—39-608
Armament, equipment, supplies	39-501—39-517
Commissioned officers	39-201—39-214
Composition, organization, control	39-106—39-112
Courts-martial	39-701—39-709
Enlisted personnel	39-401—39-405
Miscellaneous provisions	39-901—39-906
Noncommissioned officers	39-301
Pay and allowances	39-801—39-806

**NATIONAL GUARD RESERVE CORPS**See **MILITIA****NATIONAL PARK SERVICE**

Canal, filling in, jurisdiction of director	8-145
Control over park system of District	8-108
Director	
Member of National Capital Park and Planning Commission	8-101
Member of Zoning Commission	5-412
Gas mains, laying in street, permit required	7-1204
Lease of lands and buildings pending need for use	8-105
Obstructions in streets, duty to have removed	7-1207
Permits for extension of buildings beyond building line, approval	5-204
Public grounds, rules and regulations for care and management, power to adopt	8-143
Rules and regulations for government and care, power to adopt	8-143
Sale of lands by Secretary of Interior	9-304—9-306
Sidewalks in public ground, powers over	8-144
Snow and ice, removal from sidewalk adjacent to federal buildings	7-803
Special police, appointment	4-208
Streets torn up in performance of public work, duty to replace	7-1208

**NATIONAL TRAINING SCHOOL FOR BOYS**See **PRISONS AND PRISONERS**

Annual report to Attorney General	32-807
Annual report to Commissioners of District	32-813
Apprenticing inmates	32-819

**NATIONAL TRAINING SCHOOL FOR BOYS—Continued**

	32-802—32-810
Board of trustees	
A commissioner of the District to be a member	32-803
Appointment by President	32-802
By-laws, rules and regulations	32-806
Consulting trustees	32-804
Contracts and purchases	32-807
Corporate name and powers	32-805
Discretionary parole of inmates	32-821
Employees, appointment	32-808
Examination of superintendent's books	32-812
President	32-802, 32-807
Superintendent, appointment	32-808
Treasurer, appointment and bond	32-809
Boys under 17, commitment	32-815
Commitment by courts	32-815
Contracts for maintenance of boys	3-110
Duties of employees	32-811
Employees, appointment	32-808
Employment of inmates	32-819
Enticing boys from school, penalty	32-818
Harboring escaped boys, penalty	32-818
Instruction of inmates	32-819
Juvenile Court, commitments	32-815
Number of boys limited, court to be notified	32-817
Parole	32-820, 32-821
Approval of Attorney General, when required	32-821
At discretion of Board of Trustees	32-821
Grounds	32-820
Period of detention	32-816
Proceeds to be deposited to credit of the United States	32-815
Reform school of the District	32-801
Return of escaping boys	32-818
Superintendent	32-808, 32-810—32-812
Appointment	32-808
Bond	32-810
Duties	32-811
In charge of lands and property	32-812
Keeping books of account	32-812
Monthly report of cost of support of inmates	32-822
Powers	32-811
Register of boys, contents	32-812
Support of boys committed	32-822
Support of boys from District not less than \$4.50 per week	32-822

**NATIONAL TRAINING SCHOOL FOR GIRLS**See **PRISONS AND PRISONERS**

Authority of Board of Public Welfare	32-902, 32-903
Board of Public Welfare	
Appointment of officers and employees	32-905
Control over inmates	32-906
Fixing compensation of officials and employees	32-905
Parole	32-911
Power identical to that of board of trustees of National Training School for Boys	32-903
Release of girls	32-904
Succeeds to authority of former board of trustees	32-902



<b>NATIONAL TRAINING SCHOOL FOR GIRLS—Continued</b>	Sec.	<b>NECESSARIES</b>	Sec.
Board of Trustees abolished	2-101	Definition, Uniform Sales Act	28-1102
Powers and duties transferred to Board of Public Welfare	3-122	Liability of husband for wife's debts	30-211
By-laws, rules and regulations	32-904	Sales to infants under Uniform Sales Act	28-1102
Commitment by Juvenile Court	32-908	<b>NE EXEAT</b>	
Control over inmates	32-906	District Court empowered to issue writ	11-315
Disbursement of appropriations	32-912	<b>NEGLIGENCE</b>	
Employees and officials	32-905	Common Carrier Employers' Liability Act	44-401—44-405
Parole	32-910, 32-911	Homicide	40-606
Approval of Attorney General, when required	32-911	Income tax law, violation by	47-1542
By Board of Public Welfare	32-911	Settlement of claims against District	1-902
Grounds	32-910	<b>NEGLIGENCE CAUSING DEATH</b>	
Period of detention	32-909	Action does not lie where deceased recovered damages	16-1201
Provisions of law relating to National Training School for Boys made applicable	32-907	Cause of action established	16-1201
Provisions of sections 32-801—32-822 made applicable	32-907	Damages, limit	16-1201
Reform school for the District	32-901	Definition	16-1201
Right to alter, amend, or repeal provisions reserved by Congress	32-913	Distribution of damages	16-1203
Segregation of white and colored girls made mandatory	32-906	Limitation for bringing action	16-1202
		Parties defendant	16-1201
		Party plaintiff	16-1202
		Reckless homicide, motor vehicles	40-606, 40-607
<b>NATIONAL ZOOLOGICAL PARK</b>		<b>NEGLIGENT HOMICIDE</b>	
Bridges, plans, supervision by engineer of bridges	8-134	Vehicle operator	40-606, 40-607
Buildings fronting, plans, approval by Commission of Fine Arts	5-410	<b>NEGOTIABLE INSTRUMENTS</b>	
Buildings, plans, supervision by municipal architect	8-134	See <b>WAREHOUSE RECEIPTS</b>	
Parkway connecting with Potomac and Rock Creek Park	8-158—8-160	Acceptance	
<b>NATURALIZATION</b>		Definition	28-101
Dentistry, alien practitioners	2-307	Failure to give notice of nonacceptance, effect	28-729
Podiatry licensee	2-705	Notice of dishonor by nonacceptance given, notice of dishonor by nonpayment unnecessary	28-728
<b>NATUROPATHY</b>		Acceptance of bill for honor	28-937—28-946
See <b>HEALING ARTS PRACTICE ACT</b>		Contract of acceptor	28-941
Board of Examiners	2-106	Different persons entitled to accept	28-937
Examination of applicants for license	2-106, 2-114—2-117	Dishonor of bill by acceptor for honor, protest	28-946
		Excusable delay in presenting bill for payment	28-945
<b>NAVAL BATTALION</b>		Liability of acceptor	28-940
See <b>MILITIA</b>		Maturity of sight bill after acceptance	28-942
<b>NAVAL OBSERVATORY</b>		Method of making	28-938
Massachusetts Avenue as laid out though grounds declared public street	7-121	Partial acceptance	28-937
Streets and other ways, construction on grounds, restriction	7-120	Presentment for payment to acceptor	28-944
<b>NAVY</b>		Presumption of acceptance for honor of drawer	28-939
Children of officers and men stationed outside District, admission to schools without tuition	31-305	Protested bill	28-937
<b>NAVY RELIEF ASSOCIATIONS</b>		Protest for nonpayment prior to presentment to acceptor for honor or referee	28-943
Exemption from insurance company taxes	47-1808	Acceptance of bill of exchange	28-907—28-917
<b>NAVY YARD</b>		Acceptance by separate instrument, effect	28-909
Railroad track, sale and transfer to Philadelphia, Baltimore, and Washington Railroad Company	7-1217	Acceptance on face of bill, right to require assent or dissent to qualified acceptance	28-908
		Bills in a set	28-957, 28-958
		Dates from day of presentation	28-911
		Definition	28-907
		Destruction of bill by drawee, effect	28-912
		Discharge of drawer and indorser by qualified acceptance	28-917
		Dishonored bill	28-913



NEGOTIABLE INSTRUMENTS—Continued		Sec.	NEGOTIABLE INSTRUMENTS—Continued		Sec.
Acceptance of bill of exchange—Continued			Bills of exchange		28-901—28-959
General acceptances	28-914,	28-915	Acceptance		28-907
Incomplete bill		28-913	Acceptance as satisfaction of former debt		28-920
Method of making qualified acceptance		28-916	Acceptance by drawee necessary		28-902
Overdue bill		28-913	Acceptance for honor	28-937—	28-946
Promise to pay money required		28-907	Acceptance of bill for honor, persons		
Qualified acceptance	28-914,	28-916	entitled to accept		28-937
Required to be written		28-907	Acceptance supra protest		28-937
Retention of bill by drawee, effect		28-912	Alternative drawees prohibited		28-903
Rights of parties, qualified acceptance		28-917	Bills not accepted, rights of holder		28-927
Sight bills		28-913	Definition		28-901
Time allowed drawee to accept		28-911	Destruction of bill by drawee, effect		28-912
Unconditional promise to accept, before			Dishonoring by nonacceptance	28-925—	28-927
bill drawn, effect		28-910	Drawee fictitious person or under disabil-		
Acceptor of instruments		28-503	ity, right to treat as promissory note		28-905
Liabilities and warranties		28-503	Drawee not liable until acceptance		28-902
Accommodation indorsers, liability		28-505	Drawer and drawee same person, right to		
Accommodation paper, presentment to in-			treat as promissory note		28-905
dorser unnecessary		28-611	Excusable delay in presenting		28-923
Accommodation party		28-206	"Foreign bill" defined		28-904
Definition		28-206	Funds in hands of drawee not assigned		28-902
Liability to holder for value		28-206	Grounds for treating as dishonored, with-		
"Action" defined		28-101	out presentment		28-925
Agent indorsing, negating personal liabil-			"Inland bill" defined		28-904
ity		28-315	Joint drawees		28-903
Agent negotiating, liability		28-510	Lost, drawer to issue duplicate, indem-		
Agent signing	28-120,	28-121	nity		28-410
Liability of agent		28-121	Miscarried, drawer to issue duplicate, in-		
No particular form of appointment		28-120	demnity		28-410
Principal undisclosed, liability		28-121	Nonacceptance, duty of holder to treat as		
Proof of authority		28-120	dishonored		28-926
Signature by procuration, effect		28-121	Option of holder to resort to referee in		
Alteration	28-806,	28-807	case of need		28-906
Holder in due course, right to enforce			Order for payment of money addressed to		
according to original tenor		28-806	another		28-901
Material alteration enumerated		28-807	Payment of bill for honor	28-947—	28-953
Unauthorized, effect		28-806	Presentment for acceptance	28-918—	28-927
Ambiguous instruments		28-118	Protest	28-928—	28-936
Rules of construction		28-118	Referee in case of need		28-906
Ante-dated instrument		28-113	Retention by drawee, effect		28-912
Acquisition of title as of date of delivery		28-113	Right of holder to treat as foreign bill		28-904
Validity		28-113	Right of holder to treat as inland bill		28-904
Assumed name used in signing, liability		28-119	Successive drawees prohibited		28-903
"Bank" defined		28-101	Blank indorsements	28-305,	28-306
"Bearer" defined		28-101	Conversion into special indorsement		28-306
"Bill" defined		28-101	Definition		28-305
Bills in a set	28-954—	28-959	Instrument payable to bearer		28-305
Acceptance, method		28-957	Negotiation by delivery		28-305
Constitute one bill		28-954	No indorsee specified		28-305
Different parts negotiated, rights of hold-			Prior to delivery of instrument, liability		28-505
ers		28-955	Blank in instrument	28-114,	28-115
Drawee accepting more than one part,			Delivery essential to render valid		28-116
liability		28-957	Extent of authority to complete		28-115
Effect of discharging one part of bill		28-959	Holder's right to complete instrument		28-115
Holder indorsing two or more parts to dif-			Negotiable after completion		28-115
ferent persons, liability		28-956	Broker negotiating, liability		28-510
Holder whose title first accrues consid-			Cancellation		28-805
ered true owner		28-955	Signature cancelled, burden to prove mis-		
Indorsement of two or more parts to			take		28-805
different persons, liability		28-956	Unintentional or under mistake inopera-		
Payment by acceptor without requiring			tive		28-805
surrender, liability		28-958	Cashier or other fiscal officer made payee		28-313
			Indorsement by bank or corporation		28-313



NEGOTIABLE INSTRUMENTS—Continued		Sec.	NEGOTIABLE INSTRUMENTS—Continued		Sec.
Certainty required	28-102, 28-103, 28-105		Definitions—Continued		
Sum payable	28-103		“Bill”		28-101
Time	28-102, 28-105		“Delivery”		28-101
Check	28-1002—28-1010		“Holder”		28-101
Application of law concerning bills of exchange	28-1002		“Indorsement”		28-101
Certification equivalent to acceptance	28-1005		“Instrument”		28-101
Definition	28-1002		“Issue”		28-101
Drawers and indorsers discharged by certification	28-1006		“Note”		28-101
Funds not assigned until acceptance or certification	28-1007		“Person”		28-101
Liability of bank for nonpayment in error	28-1009		“Primarily”		28-101
Liability of bank on altered checks	28-1008		“Reasonable time”		28-101
Liability of bank on forged checks	28-1008		“Secondarily”		28-101
Liability of bank on raised check	28-1008		“Unreasonable time”		28-101
Not presented for payment in one year	28-1004		“Value”		28-101
Bank may refuse payment	28-1004		“Written”		28-101
Drawer, maker not liable for non-payment	28-1004		Delivery	28-116, 28-117	
Presentation for payment within reasonable time required	28-1003		Authority to deliver		28-117
Check, draft or order, making, drawing, uttering with insufficient funds	22-1410		Conditional delivery		28-117
Collateral security, sale authorized	28-106		Definition		28-101
Computation of time	28-617		Essential to validity		28-117
Conclusive presumption of delivery, holder in due course	28-117		Holder in due course, delivery presumed		28-117
Conditional indorsement	28-310		Incomplete instruments, completion and negotiation without authority		28-116
Instrument held subject to rights of conditional indorser	28-310		Instruments payable to bearer		28-311
Payment of instrument without regard to condition	28-310		Instruments reversible until delivery		28-117
Conditional promises to pay, particular fund on account for payment indicated	28-104		Making for special purpose		28-117
Confession of judgment authorized	28-106		Negotiation by delivery, warranties		28-506
Consideration	28-201—28-206		Presumption concerning		28-117
Antecedent debt	28-202		Demand instruments		28-108
Not recited	28-107		Express provision for payment on demand or at sight		28-108
Preexisting debt	28-202		Issuance, acceptance or indorsement when overdue		28-108
Valuable consideration presumed	28-201		Negotiation unreasonable length of time after issuance, effect		28-403
Want of, when a defense	28-205		No time for payment expressed		28-108
Continuance of negotiable character	28-318		Destroyed bill of exchange, protest		28-936
Until discharge by payment or otherwise	28-318		Determination of time for payment		28-617
Until restrictive indorsement	28-318		Discharge	28-401, 28-801—28-807	
Corporation indorsing, effect	28-123		By payment in due course to holder		28-401
Date of instruments	28-107, 28-112		Methods of discharging		28-801
Omission does not defeat negotiability	28-107		Dishonor by nonpayment	28-614, 28-615	
Presumed true date	28-112		Presentation and refusal of payment		28-614
Date payable	28-616, 28-617		Presentment excused, instrument overdue and unpaid		28-614
Exclusion of first day, inclusion of last	28-617		Recourse against parties secondarily liable		28-615
Falling due on Sunday or holiday	28-616		Dishonored instruments	28-925—28-927	
Instruments due on Saturday	28-616		Bills of exchange	28-925, 28-926	
“Day for act” interpreted	28-101		Dishonoring bill by nonacceptance	28-925—28-927	
Days of grace abolished	28-616		Doubt as to capacity in which signed, signer deemed indorser		28-118
Defective title to instrument	28-405, 28-406		Doubt as to whether bill or note, election by holder		28-118
Acts giving rise to	28-405		Drawer	28-502, 28-610, 28-701, 28-726	
Notice of defect	28-406		Grounds for not giving notice of dishonor		28-726
Definitions	28-101		Liabilities and warranties		28-502
“Acceptance”	28-101		Limiting liability to holder		28-502
“Action”	28-101		Notice of dishonor required		28-701
“Bank”	28-101		Presentment for payment unnecessary		28-610
“Bearer”	28-101		Due date fixed by event bound to occur		28-105
			Enjoinders, ambiguity as to capacity in which instrument signed		28-118



NEGOTIABLE INSTRUMENTS—Continued		Sec.	NEGOTIABLE INSTRUMENTS—Continued		Sec.
Essential requisites		28-102	Indorsement—Continued		
Fiduciary receiving and indorsing, liability of parties		28-2304	Method of indorsing		28-302
Figures controlled by words		28-118	Minor indorsing, effect		28-123
Foreign bills of exchange			Name of payee or indorsee misspelled		28-314
Presentation for acceptance and payment by notary authorized		1-508	Partially paid instruments, indorsement as to residue		28-303
Protest for nonpayment or nonacceptance		1-508	Place of indorsement, presumption		28-317
Forged signature, instruments unenforceable, estoppel		28-123, 28-124	Qualified indorsement		28-309
Form immaterial		28-111	Representative indorsing, negating personal liability		28-315
General indorsers, warranties and liabilities		28-507	Required to be in writing		28-302
"Holder" defined		28-101	Restrictive indorsement	28-307, 28-308	
Holder for value	28-203, 28-204		Several indorsements, effect		28-303
Definition		28-203	Special indorsement	28-305, 28-306	
Lien held on instrument			Transfer of part only of amount payable	28-303	
By implication of law		28-204	"Without recourse"		28-309
From contract		28-204	Indorsers	28-504—28-509	
Holder in due course		28-402	Bills in a set, liability		28-956
Burden of proof, transferee with defective title		28-409	Excuses for not notifying of dishonor		28-727
Definition		28-402	General indorsers, warranties		28-507
Demand instrument		28-403	Given notice of dishonor		28-701
Enforcement of instrument		28-407	Instrument negotiable by delivery, liability		28-508
Essential elements		28-402	Irregular indorsers, liability		28-505
Indorsement to one with notice, rights of transferee		28-408	Joint indorsers, liability		28-509
Notice of infirmity before fully paying for instrument		28-404	Order in which liable		28-509
Presumption		28-409	Persons deemed indorsers		28-504
Rights		28-407	Presentment of instrument for payment, when unnecessary		28-610
Title of transferor defective, burden of proof		28-409	Signing in blank before delivery, liability		28-505
Warranties of general indorser		28-507	Infirmity in instruments	28-404, 28-406	
Holder not in due course			Knowledge of acquired before fully paying for instrument, effect		28-404
Acquisition from holder in due course, effect		28-408	Notice of infirmity		28-406
Takes subject to defenses		28-408	Inland bills of exchange		1-509
Holder of instruments given an election		28-106	Notary failing to comply with law in protesting, penalty		1-509
Incomplete instruments	28-114—28-116		Notary's right to demand acceptance and payment		1-509
Bills of exchange, acceptance		28-913	Protest by notary, form and content		1-509
Blank date, right to fill in		28-114	Instrument addressed to drawee, naming required		28-102
Completion by holder, extent of authority		28-115	"Instrument" defined		28-101
Delivery essential	28-116, 28-117		Instrument dishonored in hands of agent, giving of notice of dishonor		28-706
Negotiation after completion, effect		28-115	Instrument payable on contingency, nonnegotiable		28-105
Indication of account to be debited, effect		28-104	Instrument secured by mortgage		28-106
Indication of fund out of which reimbursement to be made, effect		28-104	Intentional cancellation, discharge		28-801
Indorsee of usurious negotiable instrument	28-2705		Interest, date begins to run, no date fixed		28-118
Indorsement	28-302—28-318		Interest rate		28-2702
Bearing date later than maturity date		28-316	Irregular indorsers		28-505
Blank indorsement	28-305, 28-306		Accommodation indorsers, liability		28-505
Conditional indorsement		28-310	Instrument payable to order of maker or drawer		28-505
Corporation indorsing, effect		28-123	Instrument payable to order of third persons, liability		28-505
Definition		28-101	"Issued" defined		28-101
Entire instrument transferred		28-303	Joint and several liability, "I promise to pay" two or more signers		28-118
Fiduciaries indorsing, liability of parties		28-2304	Joint debtor, presentment of instrument for payment		28-609
Holder's right to strike out indorsement		28-319	Joint indorsers, liability		28-509
Instrument payable to two or more persons		28-312	Joint parties, giving notice of dishonor		28-712
Instruments payable to bearer		28-311			



NEGOTIABLE INSTRUMENTS—Continued		Sec.	NEGOTIABLE INSTRUMENTS—Continued		Sec.
Kinds of indorsement		28-304	Notice of dishonor—Continued		
Last day for doing act, falling on holiday		28-101	Waiver		28-721
Law merchant, when applies		28-101	Written or oral authorized		28-708
Liability of forwarding bank where payor bank fails to account for proceeds		28-1010	Written waiver above signature of endorser, application		28-722
Liability of parties	28-501—	28-510	Notice of infirmity before fully paying for instrument, effect		28-404
Lost bill of exchange, protest		28-936	Omission not affecting negotiability		28-107
Lost instruments as basis for action		13-204	Order in which indorsers liable, power to change by agreement		28-509
Maker of instrument		28-501	Order to pay out of particular funds not unconditional		28-104
Liabilities		28-501	Particular kinds of currency designated for payment		28-107
Warranties by making		28-501	Parties secondarily liable, reissuance of instruments after paying		28-803
Maturity date payable		28-616	Partnership obligation		
Minor indorsing, effect		28-123	Presentment after dissolution		28-608
Name misspelled or wrongly given, indorsement		28-314	Presentment for payment		28-608
Negotiation	28-301—	28-321	Payable at bank		
Definition		28-301	Presentment for payment		28-606
Indorsement	28-302—	28-318	Right to charge to account of principal debtor		28-613
Method		28-301	Payable at fixed rate period after date or sight		28-105
Negotiation back to prior party, reissuance		28-321	Payable on or before fixed future time		28-105
Presumably negotiated before maturity		28-316	Payable to bearer		28-110
Transfer without indorsement, effect		28-320	Instrument expressly so providing		28-110
"Note" defined		28-101	Instrument payable to fictitious or non-existing person		28-110
Notice of dishonor	28-701—	28-730	Last indorsement in blank		28-110
Address to which sent		28-720	Payable to living person without interest in instrument		28-110
Agent's right to give		28-703	Special indorsers, liability		28-311
Antecedent party, giving notice, time limit		28-719	Payable to order		28-109
Bankrupt or insolvent		28-713	Certainty as to payee required		28-109
Deceased person		28-710	Instruments payable to specified person		28-109
Depositing in post-office, effect	28-717, 28-718		Parties to whom may be drawn		28-109
Drawers and indorsers notified		28-701	Payable to order or bearer essential		28-102
Effect of giving on behalf of holder		28-704	Payable to two or more persons		28-312
Embodying waiver in instrument, effect		28-722	All required to indorse, partnerships excepted		28-312
Excuses for delay in giving		28-725	All required to indorse, unless one is authorized for all		28-312
Excuses for not giving to indorser		28-727	Payment as discharge		28-801
Failure to give notice of nonacceptance, effect		28-729	Payment in due course, definition		28-619
Giving either to principal or agent sufficient		28-709	Payment of bill for honor		
Grounds for dispensing with notice		28-724	Attestation by notarial act		28-948
Grounds for not notifying drawer		28-726	Effect of payment		28-951
Instrument dishonored in hands of agent		28-706	Holder refusing payment, effect		28-952
Joint parties		28-712	Method of making payment		28-948
Method of giving notice		28-708	More than one person offering payment, preference		28-950
Misdescription of instrument, effect		28-707	Party's subsequent discharge		28-951
Notice actually received, effect		28-720	Payer entitled to incidental expenses		28-953
Notice given by party entitled thereto, effect		28-705	Payment supra protest		28-947
Notice of nonacceptance given, notice of dishonor by nonpayment, unnecessary		28-728	Persons entitled to pay for honor		28-947
Parties residing in different places, time allowed for giving		28-716	Subrogation of payer for honor		28-951
Parties residing in same place, time allowed for giving		28-715	Payment supra protest refused, effect		28-952
Partnership, giving notice to firm		28-711	Payment to holder, discharge of instruments		28-401
Personal representative of deceased		28-710	"Person" defined		28-101
Persons entitled to give		28-702	Persons secondarily liable	28-802, 28-803	
Protest waived, effect		28-723	Act sufficient to discharge from liability		28-802
Sufficiency of notice		28-707	Extension of time of payment, discharge		28-802
Supplementing by verbal communication		28-707			
Time within which must be given		28-714			



NEGOTIABLE INSTRUMENTS—Continued		Sec.
Persons secondarily liable—Continued		
Payment of instrument, right	28-803	
Release of principal debtor	28-802	
Place of indorsement, presumption	28-317	
Place of payment or drawing not specified	28-107	
Post-dated instrument	28-113	
Acquisition of title as of date of delivery	28-113	
Validity	28-113	
Presentment for payment	28-601—28-619	
Bills of exchange	28-602	
Circumstances rendering unnecessary	28-613	
Delay in making, valid excuses	28-612	
Demand instruments	28-602	
Drawers and indorsers	28-601	
Exhibition of instrument required	28-605	
Instrument payable at bank	28-606	
Instrument payable on specified date	28-602	
Joint debtors, presentment to all	28-609	
Joint debtors primarily liable	28-609	
Necessity for making presentation	28-601, 28-602	
Necessity for presenting to drawer	28-610	
Partnership obligation	28-608	
Persons primarily liable	28-601	
Place of presentment	28-604	
Principal debtor dead	28-607	
Sufficiency of presentment	28-603	
Waiver	28-613	
Presentment of bill for payment to acceptor for honor	28-944	
Presentment of bill of exchange for acceptance	28-918—28-927	
Bill not accepted, rights of holder	28-927	
Days upon which made	28-922	
Drawee dead	28-921	
Drawer, release by failure to present	28-919	
Duty of holder, bill not accepted	28-926	
Duty of holder to present or negotiate	28-919	
Excusable delay in presenting	28-923	
Excuses for not presenting bill	28-924	
Indorsers, release by failure to present	28-919	
Insolvent or bankrupt drawees	28-921	
Joint drawee	28-921	
Method of presenting	28-921	
Necessity for presentment	28-918	
Time presented	28-921	
Presumption concerning date of instrument	28-112	
Presumption of negotiation before maturity	28-316	
Primary liability, definition	28-101	
Principal debtor becoming holder at or after maturity, effect	28-801	
Promise to pay out of particular funds not unconditional	28-104	
Promissory note	28-905, 28-1001	
Bill of exchange, one may be treated as	28-905	
Definition	28-1001	
Protest by notary		
Fee	1-514	
Notice of protest, fee	1-514	
Protest of bill	28-928—28-936	
Acceptance supra protest	28-937, 28-938	
Acceptor for honor dishonoring bill	28-946	
Acceptor of bill of exchange insolvent	28-934	
Annexation to bill	28-929	
Cases in which necessary	28-928	

NEGOTIABLE INSTRUMENTS—Continued		Sec.
Protest of bill—Continued		
Circumstances rendering unnecessary	28-935	
Contents	28-929	
Day on which made	28-931	
Excusable delays	28-935	
Failure to protest when necessary, effect	28-928	
Foreign bill	28-923	
Inland bill	28-928	
Lost or destroyed bills	28-936	
Nonacceptance, subsequent protest for nonpayment	28-933	
Noting at time and subsequent day extending	28-931	
Persons entitled to protest	28-930	
Place of protest	28-932	
Prior to presentment to acceptor for honor or referee	28-943	
Protest for better security, acceptor insolvent	28-934	
Protesting in presence of witnesses	28-930	
Protest of dishonored instrument	28-730	
May be given on any instrument	28-730	
Required only on foreign bills of exchange	28-730	
Provisions not affecting negotiability	28-106	
Qualified indorsement	28-309	
Constitutes indorser mere assignor of title	28-309	
Effect	28-309	
Method of evidencing	28-309	
Negotiability unimpaired	28-309	
Warranties of indorser	28-506	
Reasonable time, method of determining	28-101	
Recourse against parties secondarily liable	28-615	
Referee in case of need		
Excusable delay in presenting bill for payment	28-945	
Protest for nonpayment prior to presentment to referee	28-943	
Reissuance of instrument	28-321	
Negotiated back to prior party	28-321	
Right to enforce against intervening party limited	28-321	
Renunciation of rights by holder	28-804	
Absolute renunciation as to principal debtor, discharge of instrument	28-804	
Force and effect	28-804	
Required to be in writing and delivered	28-804	
Rights of holder in due course without notice unaffected	28-804	
Required to be in writing	28-102	
Restrictive indorsement	28-307, 28-308	
Definition	28-307	
Effect	28-308	
Effect on continuance of negotiable character	28-318	
Method of evidencing	28-307	
Rights of indorsee	28-308	
Title acquired by subsequent indorsee	28-308	
Right of holder	28-401—28-409	
Rules of law, when applied	28-101	
Seal does not affect negotiability	28-107	
Secondary liability, definition	28-101	



NEGOTIABLE INSTRUMENTS—Continued		Sec.	NEGOTIABLE INSTRUMENTS—Continued		Sec.
Sight bill, acceptance by honor, maturity date		28-942	Words control over figures		28-118
Signature by maker or drawer required		28-102	Written control printed provisions		28-118
Signatures in general	28-118—28-124		"Written" defined		28-101
Agent signing on behalf of principal		28-120, 28-121	Wrongly detained bill of exchange, protest		28-936
Assumed name used, liability		28-119	<b>NEW HAMPSHIRE AVENUE</b>		
Liability of person signing as agent		28-121	Abandonment in part		7-123 note
Necessity for name to appear on instrument		28-119	<b>NEW TRIAL</b>		
Trade name signed, liability		28-119	See PLEADINGS		
Words descriptive of person used, liability		28-121	Motion for new trial		13-221
Special indorsement	28-305, 28-306		Probate Court		11-519
Conversion of blank indorsement into special		28-306	<b>NEXT FRIEND</b>		
Definition		28-305	Minors suing by		21-117
Further indorsement of transfer necessary		28-305	<b>NICHOLSON STREET</b>		
Instruments payable to bearer		28-311	Eminent domain, assessment of benefits and damages		7-219
Statutes requiring statement of nature of consideration unaffected		28-107	Dismissal of proceedings, discretion, damages exceeding benefits		7-219
Striking out indorsement		28-319	<b>NOISES</b>		
Effect to relieve subsequent indorsers		28-319	Power to regulate and prohibit		1-224
Right of holder		28-319	<b>NONAGE</b>		
Sufficiency of language used		28-111	Annulment of marriage		16-403
Sum certain must be payable		28-102	<b>NON COMPOS MENTIS</b>		
Sum payable required to be certain			See INSANE PERSONS		
Attorney's fee provided for		28-103	Guardian ad litem, appointment		13-107
Costs of collection recoverable		28-103	<b>NONNEGOTIABLE INSTRUMENTS</b>		
Instruments payable in installments		28-103	Instruments payable on contingency		28-105
Instruments payable with exchange		28-103	<b>NONPERFORMANCE</b>		
Interest-bearing instrument		28-103	Conditions, under Uniform Sales Act		28-1111
Sunday, last day for doing act, falling on		28-101	<b>NONPROFIT CORPORATIONS</b>		
Surrender of instrument on payment		28-605	See CORPORATIONS NOT FOR PROFIT		
Trade name used in signing, liability		28-119	<b>NONRESIDENTS</b>		
Transfer without indorsement			Actions against, bringing within District, restriction		11-308
Effect		28-320	Admission of children to District schools		31-301—31-305
Rights of transferee		28-320	Business-chance brokers and salesmen		45-1410
Time when subsequent indorsement takes effect		28-320	Depositions		14-201
Unconditional promise required		28-102	Indigent insane, return to place of residence		3-110
Unconditional promise to pay		28-104	Indigent poor, return to place of residence		3-110
Order or promise to pay out of particular fund		28-104	Municipal Court witnesses		11-741
Statement of transaction giving rise to interest		28-104	Nonresidence, unsafe structure and excavations, notice to abate conditions		5-505
Undated instrument			Operating motor vehicles		40-303
Filling in wrong date, effect		28-114	Parties to actions, patent law infringement cases		11-307
Presumed to date from time of issuance		28-118	Plaintiffs in Municipal Court		11-719
Right to fill in date		28-113	Real estate brokers and salesmen		45-1410
Uniform law	28-101—28-409, 28-501—28-1003, 28-1005—28-1007		Service of process by publication		13-108
Unreasonable time, method of determining		28-101	Service of process outside District		13-108
Usury		28-2705	Sewer and watermain connections, notice requiring		6-404
"Value" defined	28-101, 28-202		Failure to make, making at public expense, charge against property		6-404
Waiver of benefit of law authorized		28-106	<b>NONSUPPORT</b>		
Waiver of protest, effect to waive presentment and notice of dishonor		28-723	Wife and minor children, penalty		22-903
Want of consideration		28-205	<b>NORTH DAKOTA AVENUE</b>		
Defense, holders not in due course		28-205	Abandonment in part		7-123 note
Partial failure, when defense pro tanto		28-205			
Warranties, negotiation by delivery or qualified indorsement		28-506			
Warranties of general indorsers		28-507			



## NOTARIES PUBLIC

See BANKS AND OTHER FINANCIAL INSTITUTIONS

Acknowledgment, power to take	1-503
Exception	1-501
Restriction	1-501
Admission to practice before department of federal government	1-501
Affidavits, power to take	1-503
Appointment by President	1-501
Bond	1-504
Certification of papers, exception	1-501
Death or resignation, custody of records and papers	1-516
Deeds, power to take and certify acknowledgments	1-511, 45-402
Demand for acceptance or payment, notary's fee	1-514
Depositions, power to take	1-503, 1-511
Documents and papers for use outside District	1-510
Powers of notary	1-510
Employees of banks, trust companies	26-110
Extra territorial legality of acts	1-510
False certification of recordable instruments, penalty	22-1308
False personation before	22-1303
Fees	1-514, 1-515
Penalty for taking higher fees	1-515
Schedule of fees permitted	1-514
Foreign bills of exchange	1-508
Authority to demand acceptance and payment	1-508
General powers of notary	1-508
Protesting for nonacceptance or nonpayment	1-508
Inland bills of exchange	1-509
Authority to demand acceptance and payment	1-509
Failure to comply with law, penalty	1-509
Form and contents of protest	1-509
Prima facie evidence notaries protest	1-509
Protest	1-509
Jury service	11-1420
Married women, power to take acknowledgments and administer oaths of or to	1-511
Oaths	1-504
Power to administer, exception	1-501
Official document exempt from execution	1-507
Payment for honor	
Attestation by notarial act	28-948
Declaration of payer for honor	28-949
Performance of official act in connection with employment prohibited	1-501
Powers of attorney, power to take and certify acknowledgment	1-511
Property clerk vested with powers of	4-154
Protest of bills and notes	1-508, 1-509
Copy of record as evidence	1-513
Protest of bills of exchange	28-930
Record of official act	1-512, 1-513
Certified copies	1-512
Duty to keep	1-512
Evidence, certified copies	1-513

Sec.

## NOTARIES PUBLIC—Continued

Sec.

Removal from office, custody of records and papers	1-516
Residence requirement	1-501
Right to represent client before department of United States Government	1-501
Seal	1-505—1-507
Authentication of official act	1-505
Deposit of impression with clerk of District Court	1-506
Exempt from execution	1-507
Notary required to obtain	1-505
Signature, filing with clerk of District Court required	1-506
Term of office	1-502
Vacation of office, custody of records and papers	1-516
Written instruments in general, power to take and certify acknowledgments	1-511
NOTE BROKERS	
Definition	47-1708
Taxation	47-1708
NOTES	
See NEGOTIABLE INSTRUMENTS	
NOTICE OF DISHONOR	
Effect of giving on behalf of holder	28-704
NOTICES	
See NEGOTIABLE INSTRUMENTS; PUBLICATION OF NOTICE	
Adoption, notice of petition	16-201
Alleys or minor streets, condemnation proceedings, one owner without notice, effect, correcting error	7-327
Anatomical Board claiming bodies of deceased indigent	2-202
Architects, proceedings to revoke certificate	2-1027, 2-1028
Attachment and garnishment	16-301
Barbed-wire fences, removal	7-1103
Before delivery	2-203
Closing and readjusting streets and highways	7-402
Decrees confirming sales as notice	15-109
Depositions, notice required	14-201
Duties and powers of Commissioner	1-214
Electrical wiring, defective or dangerous condition	1-720
Eminent domain	
Alleys and minor streets, opening, widening, or straightening	7-314
Assessment of land no part of which taken	7-221
Fire escapes and safety provisions	
Notice requiring construction	5-315
Requiring construction	5-309, 5-310
Firemen resigning from force	4-407
Healing arts, examination of applicants for license	
	2-114
Insanitary buildings, condemnation	
Methods of service	5-603
Notice to show cause	5-603
Notice to vacate	5-605
Occupation of building after notice prohibited	5-604



NOTICES—Continued		Sec.	NURSES		Sec.
Insanitary buildings, condemnation—Con.			Application for examination and registration		2-404
Order of condemnation		5-603	Fee		2-404
Property in litigation		5-608	Filing of false diploma, certificate, or credential prohibited		2-407
Juvenile Court		11-909	Proof of qualifications		2-404
Permanent Highway Plan, property owners, hearing		7-115	Denial of registration or reregistration		2-406
New highway plans proposed		7-122	Appeal to Court of Appeals		2-406
Plumbing regulations, violation		1-725	Review for United States District Court		2-406
Podiatry Board Examiners, rules and regulations, adoption		2-719	Educational requirements		2-404
Policeman, giving of intention to resign		4-125	Examination for registration		2-403
Probate Court, trial of issues not relating to wills		11-517	Held annually		2-403
Public contracts, advertisement for bids		1-808, 1-809	Notice given		2-403
Sewer and water-main connections, notice to make		6-402—6-404	Examining Board		2-402
Streets and other improvements			Annual report to Commissioners		2-408
Notice of assessment		7-608	Appointment by Commissioners of District		2-402
Notice of intention		7-608	Audit of accounts		2-408
Unsafe structures and excavation		5-504	By-laws, power to adopt and amend		2-403
Abatement as nuisance		5-504	Disbursement of funds		2-408
Contents of notice		5-505	Limitation on expenses		2-408
Notice to remedy conditions		5-501	Nominees for appointment		2-402
Service of notice		5-505	Number of members		2-402
Warehouseman's lien, sale of goods to satisfy		28-1927	Oath of office		2-402
Weeds, notice to cut		6-901, 6-902	Organization meeting		2-403
Zoning regulation, amendment, notice of hearing		5-415	Per diem of members		2-408
N STREET			President		2-403
Abandonment in part		7-123 note	Qualifications for appointment		2-402
NUISANCES			Records kept by secretary		2-403
Boiler, unauthorized use		1-713	Removal of secretary from office, ground		2-403
Buildings erected in violation of law		5-408	Secretary		2-403
Height regulations violated		5-408	Term of office		2-402
Nonfireproof building		5-408	Treasurer		2-403
Penalties		5-408	Vacancies, method of filling		2-402
Drug-addict resorts		33-416	Vice-president		2-403
Houses of prostitution		22-2713	Expenses incident to administering regulatory law, payment		2-408
Abating by injunction		22-2714	Fees for registration and reregistration paid		2-408
Bond for abatement		22-2719	treasurer of board		2-408
Granting immunity to witnesses		22-2721	Inspection of schools of nursing		2-403
Order of abatement		22-2717	Minimum age		2-404
Proceeds of sale		22-2718	Nonregistered nurses, right to practice as such		2-410
Sale under abatement		22-2717	Nurses' registry		
Taxing premises used		22-2720	Definition		47-2101
Trial in abatement proceedings		22-2715	License law		47-2101—47-2111
Violating injunctions		22-2716	Penalty for violating regulatory law		2-409
Special assessments for removal, payment		47-1105	Proof of good moral character required		2-404
Unsafe structures or excavations		5-504, 5-505	Qualifications for registration		2-404
Contents of notice		5-505	Registration required		2-401
Notice given owner or interested party to abate		5-504, 5-505	Nurses from other states, reciprocity		2-405
Service of notice		5-505	Register maintained		2-403
NUNCUPATIVE WILLS			Training schools for nurses		2-403
Validity		19-102	Reregistration annually		2-406
NURSERIES			Application		2-406
Anacostia Park, tree nursery		8-161, note	Failure to reregister, cancelation of registration		2-406
Diseased or insect-infested plants, transportation prohibited, penalty		6-904, 6-905	Fee		2-406
			Restoration of registration		2-406
			Revocation or suspension of certificate		2-407
			Appeal to Court of Appeals		2-407
			District attorney to conduct proceedings		2-407
			Duration, determination by court		2-407
			Grounds		2-407
			Jurisdiction of United States District Court		2-407
			Petition, verification		2-407



**NURSES—Continued**

Salary of secretary of board	2-408
"She" construed to include the word "he"	2-411
Training school	2-404
Annual reregistration fee	2-406
Registration fee	2-406
Registration, requirements	2-404
Schools outside District, recognition of diplomas	2-405

**NUX VOMICA**

Poison, sale, restrictions	2-612
----------------------------	-------

**OAK HILL CEMETERY COMPANY**

Cemetery property exempted from taxation	47-808
Property inalienable	47-808

**OATHS**

Administered by district attorney	11-1002
False swearing, penalties	11-1002
Administration in taking depositions	14-201
Affirmation may be substituted for	49-206
Assistant surveyor of District	1-604
Attorneys	11-1301
Authority to administer	
Agents of Public Utilities Commission	43-418
Assessor	47-606
Board of equalization and review	47-606
Clerk of District Court	11-402
Commissioners of District	4-103
Corporation counsel	1-303
District attorney	11-1002
Juvenile Court judges	11-904
Major superintendent of police	4-123
Members of board of assistant assessors	47-606
Notary public	1-511
Personal property tax appraisers	47-1203
Police Court clerk	11-622, 11-712
Police Court judges	11-608
Police Department Trial Board chairman	4-122
Public utilities commissioners	43-418
Real Estate Commission	45-1411
United States District Court judges	11-304
Board of Cosmetology members	2-1302
Board of Examiners and Registrars of Architects, oath of office	2-1004
Board of Optometry members	2-503
Board of Pharmacy members	2-607
Boiler inspector	1-704
Civil officers of District	1-308
Subscribed, certified, and recorded	1-308
Clerk of District Court	11-401
Collectors	20-402
Commissioned officers of militia	39-206
Commissioner of deeds, power to administer	1-401
Commissioners of District	
Oath of office	1-208
Power to administer, matters connected with Police Department	4-123
Corporation counsel and assistants, power to administer	1-303
Court of Appeals justices	11-203
District Attorney	11-1001
Executors	20-301
False personation, penalty	22-1303

Sec.

**OATHS—Continued**

Jurors, eminent domain proceedings	
Land for streets	7-205
Opening, widening, or straightening alleys	7-315
Juvenile Court	11-904
Juvenile Court judge	11-920
Major and superintendent of police, power to administer	4-123
Marshal	11-1101
Municipal Court	11-712
Judges	11-701
National guard enlisted personnel	39-402
Notaries public	1-504
Power to administer	1-511
Exception	1-501
Fee	1-514
Married women	1-511
Nurses' Examining Board members	2-402
Police Department members	4-104
Police Department Trial Board chairman, power to administer	4-122
Property clerk's power to administer	4-155
Public utilities commissioners	43-201
Referee	16-1702
Register of wills	19-401
Superintendent of insurance	35-401
Superintendent of weights, measures, and markets	10-102
Surveyor of District	1-602
Deposited with Commissioners of District	1-602
Trial boards of Police and Fire Departments	4-604
United States District Court judges	11-303
Justices' powers to administer oaths	11-304
Witnesses	14-101

Sec.

**OBLIGATIONS**

See CONTRACTS; NEGOTIABLE INSTRUMENTS; SALES, UNIFORM ACT	
Assignment	28-2502
Fiduciary's bond or undertaking	28-2403
Indorsement of payments on instrument, effect of Statute of Frauds	12-305
Interest rate	28-2702
Joint obligations	
Consolidation of several actions	13-401
Parties	13-401
New promise to pay, effect of Statute of Frauds	12-305
Transfer in fraud of creditors	12-401

**OBSTRUCTING JUSTICE**

Definition, penalty	22-703
---------------------	--------

**OBSTRUCTION IN STREET**

Capitol grounds, improper use	9-107
Criminal penalty for	22-3120, 22-3121
Fines collected in name of United States	22-3121
Duty to require removal	7-1207
Failure to remove after notice, penalty	7-1204
Notice for removal	7-1204
Suits for removal, prosecution by district attorney	7-1207

**OFFICE BUILDINGS**

See FIRE ESCAPES AND SAFETY PROVISIONS	
Fire escapes and safety provisions	5-301—5-316



OFFICERS AND EMPLOYEES OF DISTRICT		Sec.	OFFICERS AND EMPLOYEES OF DIS-		Sec.
See CLERK OF UNITED STATES DISTRICT COURT;			TRICT—Continued		
COMMISSIONERS OF DISTRICT OF COLUMBIA;			Inspector of asphalt and cement		1-307
DISTRICT ATTORNEY; ELECTRICAL ENGINEER;			Jury service, eligible for		11-1420
FIRE DEPARTMENT; HEALTH OFFICER; INSPEC-			Exemptions		11-1420
TORS; LEAVES OF ABSENCE; MARSHAL; PARK			Lapsed salaries, reversion to treasury		1-310
POLICE; POLICE DEPARTMENT; SUPERINTEND-			Leaves of absence		1-312
ENT OF POLICE; SURVEYORS			Holidays, per diem employees, leave with		
Appointment and removal by Commissioners	1-216		pay		1-314
Architect of Capitol	5-412		Members of Police and Fire Department		
Assistant inspector of buildings, powers and			excepted		1-312
duties	1-729		Per diem employees		1-313
Assistant inspectors of electrical wiring	1-721		Public school officers, teachers and em-		
Assistant superintendent of machinery, Fire			ployees excepted		1-312
Department	4-405		Regular annual employees		1-312
Auditor of District	2-408, 11-627, 11-940		Marine engineers	4-404, 4-405	
Bailiffs	11-623		Marine firemen	4-404, 4-405	
Becoming surety for contractors prohibited	1-210		Municipal architect		1-306
Boiler inspector	1-703, 1-704		Notaries public	1-501—1-516	
Bonds of officers and employees of District	1-213		Oaths of civil officers, subscribed, certified and		
Powers of Commissioners of District	1-213		recorded		1-308
Premiums on bond, payment	1-213		Paid only for services rendered		1-310
Bribery, conviction of, disqualified from hold-			Pay rolls, signature by mark, witnesses		1-315
ing office	1-316		Perjury, conviction of, disqualification from		
Capitol police	9-116		holding office		1-316
Chief of engineers	8-101, 8-130, 9-101		Pinkerton Detective Agency, employees of,		
Fire Department	4-402, 4-404, 4-405		employment prohibited		1-317
Children's right to free schooling	31-303		Playgrounds, volunteer services, acceptance		
Civil Service, application to employees, school			authorized		8-132
officers and teachers excepted	1-217		Plumbing inspector	1-724, 1-727	
Commissioner of education	2-103		Principal assistant inspector of buildings,		
Commissioners of deeds	1-401, 1-402		powers and duties		1-728
Commissioners' power to abolish offices	1-216		Property clerk	4-151—4-167	
Commissioning of appointive officers	1-220		Property custodian		1-309
Compensation of injured employees of District	1-311		Purchasing officer of District	1-304, 1-305	
Budget estimate	1-311		Receiving pay from professional bondsmen		
Federal law made applicable	1-311		prohibited		23-603
Members of Police and Fire Department,			Recorder of deeds	9-204, 9-208, 9-215—9-218	
exception, pension or pensionable	1-311		Register of wills	19-401—19-411	
Payment of award	1-311		Secretary of District		1-803
Conviction of certain crimes renders ineligible			Special policemen	4-115, 4-133	
to office	1-316		Superintendent of machinery	4-404, 4-405	
Coroner	11-1201—11-1208		Superintendent of public schools		2-103
Corporation counsel	1-301		Superintendent of weights, measures, and		
Corruptly influencing, penalty	22-704		markets	10-101—10-103	
Crier	11-204, 11-312		Surveyor	1-601—1-629, 7-113, 7-124, 7-125, 7-130	
Custodians of property, report, content	1-309		Teachers, public school	1-217, 22-3002	
Deputy chief engineers, Fire Department			United States Commissioners	11-1511	
	4-402, 4-404, 4-405		Unused appropriation for salaries, reversion		
Deputy fire marshals	4-404, 4-405		to treasury		1-310
Detective agency employees, employment by			Usurpation of office, remedy	16-1601—16-1611	
District prohibited	1-317		Volunteer services, acceptance prohibited, ex-		
Director of public welfare	3-105		ception		1-215
Director of social work	11-922		Water registrar	43-1506	
Electrical engineer	1-720, 1-721		Weighmasters	10-128	
Electrical inspector	1-723		White House Police	4-301—4-305, 4-503—4-511	
Embezzlers of public funds, disqualification			OFFICERS' RESERVE CORPS		
from holding office	1-316		Government employee members to be granted		
Employment required to be authorized by law	1-310		leaves of absence		39-109
False personation before	22-1303		Government employee members to be re-		
False personation of	22-1304		stored to positions when relieved from duty		39-110
Fidelity bonds	1-213		OFFICES		
Fire marshals	4-404, 4-405		Commissioners' power to abolish		1-216
Health officer	6-101		Consolidation by Commissioner		1-216
Infamous crime, conviction of, disqualifica-					
tion from holding office	1-316				



<b>OIL</b>		<b>Sec.</b>	<b>OPERATORS' PERMITS</b>	<b>Sec.</b>
See <b>GASOLINE AND OIL</b>			See <b>MOTOR VEHICLES</b>	
<b>OLD-AGE ASSISTANCE</b>			<b>OPINIONS</b>	
Administering agency	46-203		Court of Appeals	11-206
Aid declared inalienable	46-204		Cost per volume	11-207
Aid exempted from levy or execution	46-204			
Amount of aid	46-203		<b>OPIUM</b>	
Application under oath	46-206		See <b>NARCOTIC DRUGS</b>	
Appropriations and estimates	46-213		Definition	33-401
"Assistance" defined	46-201		Exempted medical preparations	33-410
Authority of Commissioners of the District	46-203		Record kept of receipts and sales	33-411
Board of Public Welfare, powers and duties	3-110		Sale by manufacturer or wholesaler, written orders	33-405
Change or suspension	46-208		Sale, prescription	2-610, 2-611
Cooperation with federal Social Security Board	46-215			
Definitions	46-201		<b>OPTOMETRY</b>	
Denial of relief, review	46-203		Application for license	2-513
Disbursements for expenses	46-214		Filed with secretary-treasurer	2-513
Eligibility	46-202		Recommendation of reputable citizen, verification, content	2-513
Age requirement	46-202		Board of Optometry	2-503—2-508
Citizenship required	46-202		Adjournment for want of quorum	2-504
Not habitual tramp nor beggar	46-202		Annual report to Commissioners	2-508
Not having disposed of property to get aid	46-202		Appointment by Commissioners	2-503
Not inmate of public reformatory or correctional institution	46-202		By-laws and regulations, power to adopt	2-505
Residence requirement	46-202		Certified copies of record, prima facie evidence	2-508
Without relatives able and legally required to aid	46-202		Compensation	2-507
Funeral expenses on death of recipient	46-205		Expenses not to exceed receipts	2-507
Home for Aged and Infirm	3-106		Meetings	2-504
Improperly obtained, investigation and cancellation	46-209		Nominees for appointment	2-503
Investigation of applicant	46-207		Number of members	2-503
Liability of recipient's estate	46-212		Oath of office	2-503
Liability of relatives for support	46-211		Office quarters	2-515
Relatives liable	46-211		Organization meeting	2-504
Suits to recover amounts furnished	46-211		President	2-504
Obtaining by fraud, penalty	46-210		Qualification for membership	2-503
Recipients not to receive other public aid except medical, surgical or nursing care	46-202		Quorum	2-504
Recovery from estates of recipients, one-half payable to United States	46-212		Record of proceedings kept	2-508
Reference of applicants to Board of Public Welfare	46-203		Records open to inspection	2-508
Revocation	46-208		Removal from office, ground	2-503
Transfer of recipient's property to Commissioners of the District	46-212		Seal	2-515
			Secretary-treasurer	2-504, 2-506, 2-507
<b>OLIVE OIL</b>			Term of office	2-503
Sale by other than pharmacist	2-601		Vacancy filled for unexpired term	2-503
			Vice-president	2-504
<b>ONIONS</b>			Certified copy of license, prima facie evidence	2-513
Sale by bunch authorized	10-115		Charges preferred against licensee	2-517
Standard crate, dimensions	10-115		Copy of complaint furnished refused	2-517
			Determination by board	2-517
<b>OPERA HOUSES</b>			Notice, hearing, witnesses	2-517
License fee	47-2320		Constitutionality of act, provisions separable	2-522
Prerequisites to license	47-2302		Criminal offenses	2-502
Revocation of license for violation of decency regulations	47-2302		False impersonation of another	2-502
			Practicing without license	2-502
<b>OPERATING ENGINEERS</b>			Definition	2-501
See <b>STEAM AND OTHER OPERATING ENGINEERS</b>			Design for license, adoption	2-515
<b>OPERATOR COSMETOLOGIST</b>			Display of certificate to practice	2-513
Definition	2-1301		Doctor of medicine, right to use title	2-519
			Examination of applicant for license	2-509, 2-511, 2-513
			Educational qualifications	2-511
			Educational standards, power to change	2-512
			Failure to pass special examination, second examination	2-513



<b>OPTOMETRY—Continued</b>	Sec.	<b>ORPHAN'S COURT</b>	Sec.
Examination of applicant for license—Con.		Replaced by Probate Court	11-501
Failure to pass standard examination,		<b>ORTHODONTIA</b>	
second examination	2-513	Dentist, examination for license	2-308
Held twice yearly	2-513	<b>ORTHOPEDIC PODIATRY</b>	
Limited examination for existing practi-		Podiatry license examination	2-705
tioners	2-510	<b>OSTEOPATHY</b>	
Persons qualified to take examination	2-511	See <b>MEDICINE AND OSTEOPATHY</b>	
Place held	2-515	<b>OUNCE</b>	
Required unless otherwise provided	2-509	Liquid ounce, dimension	10-119
Special examination subject	2-510	<b>OUSTER</b>	
Standard examination subject	2-511	See <b>QUO WARRANTO</b>	
Taking standard examination when op-		<b>OUTDOOR SIGNS</b>	
tional, failure to pass, effect	2-510	Commissioners' power to regulate	1-231
Exceptions from act	2-520	Force and effect of regulations	1-231
Fees under regulatory law	2-513, 2-514	Fee for license	1-232
Clerk fees, for recording license	2-513	License required	1-232
Examination for license	2-514	Penal provision of regulations, effective date	1-233
Failure to pay renewal fee, penalty	2-514	Penalty for violating regulations	1-233
Practitioners from other states, licensing	2-518	Publication of regulations	1-233
Reinstatement on failure to pay renewal		Real estate, for sale or rental signs	7-1001
fee	2-514	Rejection of application	1-232
Renewal of registration	2-514	Revocation of license	1-232
Issuance of license to practice	2-513	<b>OUTSIDE TOILETS</b>	
License recorded with clerk of District Court	2-513	See <b>PRIVIES</b>	
Fee for recording	2-513	<b>OYSTERS</b>	
Masculine gender construed to include fem-		Sale by count authorized	10-120
inine	2-521	Shucked oysters, sale by liquid measures	10-120
Persons selling spectacles excepted from Act	2-520	<b>PACKAGES</b>	
Physicians and surgeons excepted from Act	2-520	Forging brands and labels, penalty	22-1402
Practitioners from other states, licensing, fee,		<b>PALMISTS</b>	
reciprocity	2-518	See <b>FORTUNE TELLERS</b>	
Prescription, right to write limited	2-519	<b>PANDERING</b>	
Re-entering practice after retirement	2-514	See <b>ASSIGNATION; HOUSES OF PROSTITUTION;</b>	
Refusal of license, ground	2-515	<b>LEWDNESS; PROSTITUTION</b>	
Register	2-508	Compelling female	22-2705, 22-2706
Registration of licenses	2-513	Immoral purposes, to reside for	22-2705
Revocation or suspension of license	2-515	Prostitution, to reside for	22-2706
Failure to pay registration renewal fee	2-514	Sexual intercourse, to reside for	22-2706
Ground	2-516	To engage in prostitution	22-2705
Right to use titles and degrees limited	2-519	To marry	22-2705
Secretary-treasurer of board	2-504, 2-506, 2-507	Detaining female for	22-2706, 22-2709
Bond	2-506	Debts contracted in house of prostitution	22-2709
Compensation	2-507	Prostitution	22-2706
Election	2-504	Sexual intercourse	22-2706
Singular number construed to include plural	2-521	Parent, guardian, consent to taking female	22-2705
<b>ORAL SURGERY</b>		Placing female for immoral purpose	22-2705
Dentist, examination for license	2-308	Placing female for prostitution	22-2705, 22-2710
<b>ORDERS</b>		In charge or custody of another	22-2705
See <b>JUDGMENTS AND DECREES</b>		In house of prostitution	22-2705
Juvenile Court	11-930	Receiving consideration for	22-2710
Special terms of United States District Court	11-313	To reside with another	22-2705
<b>ORDINANCES AND REGULATIONS</b>		Procuring female	22-2705, 22-2710
See <b>MUNICIPAL ORDINANCES AND REGULATIONS</b>		For house of prostitution	22-2705
<b>OREGON AVENUE</b>		For immoral purpose	22-2705
Daniel Road Northwest, name changed	7-107 note	For prostitution	22-2705
Street between New Hampshire Avenue and		Receiving consideration for	22-2710
Eighteenth Street Northwest, name changed	7-107 note		
<b>ORPHAN ASYLUMS</b>			
Buildings and grounds exempted from taxa-			
tion	47-804		



<b>PANDERING—Continued</b>	Sec.	<b>PARKING SPACE</b>	Sec.
Receiving consideration for	22-2710—22-2712	Congressmen, public buildings	40-604
Place of prostitution	22-2712	<b>PARK POLICE</b>	
Furnishing	22-2712	Age retirement allowance, conditions	4-507
Servicing	22-2712	Appointment to White House Police	
Placing female in charge of another for	22-2711	Appointment to lower grade prohibited	4-303
Debauchery	22-2711	Filling of vacancies	4-302
Immoral purposes	22-2711	Appropriation to carry on act authorized	4-306
Prostitution	22-2711	Death benefits payable to widow and children, conditions	4-507
Placing female in house of prostitution	22-2710	Death while in service, repayment of contributions to relief fund	4-504
Receiving consideration from female for	22-2707	Director of National Park Service given exclusive control	4-202
Debauchery	22-2707	First sergeant	4-202
Immoral acts	22-2707	Funeral expenses, amount contributed from relief fund	4-509
Prostitution	22-2707	Leaves of absence	4-207
Wife	22-2708	Number of days allowed annually	4-207
House of prostitution, placing in	22-2708	Sick leave	4-207
Prostitution, to lead life of	22-2708	Lieutenant	4-202
<b>PARACHUTES</b>		Medical attendance	4-206
Flying, penalty	22-1117	Motorcycle police, extra compensation	4-204
<b>PARADES</b>		Organization	4-202
Capitol Grounds	9-111	Privates, number and grade	4-202
<b>PARAPET</b>		Reappointment, redeposit of refund in relief fund	4-504
Height regulated	5-407	Refund from relief fund on separation from force	4-504
<b>PARDONS</b>		Refund of payments to retirement fund	4-205
Commissioners' power to grant	1-220	Relief fund, salary deductions, refunds	4-503, 4-504
<b>PAREGORIC</b>		Retirement Law made applicable, contributions to fund	4-515
See NARCOTIC DRUGS		Retirement, period of service with White House Police counted	4-305
Retail sales, prescription required	33-410	Retiring and Relief Board, powers and duties, report of findings	4-510, 4-511
Sale by manufacturers and wholesalers, written orders	33-410	Salaries	4-203
<b>PARENT AND CHILD</b>		Sergeants, number, rank	4-202
See CHILDREN; DEPENDENT AND NEGLECTED CHILDREN; DESERTION		Special police, appointment authorized, powers and duties	4-208
Marriage of child, consent to	30-111	Superintendent	4-204
Paternity, jurisdiction of Juvenile Court	11-907	Army officer detailed as	4-202
Prostitution of female child, consent of parent, penalty	22-2705	Extra compensation	4-204
Religious faith considered in placing children	11-918	Transportation furnished	4-204
Right of parent to be heard in Juvenile Court	11-915	Temporary disability allowance	4-506
<b>PARIS GREEN</b>		Total disability allowance, conditions	4-507
Sale, restrictions	2-612	Transfer from White House Police	4-305
<b>PARKING METERS</b>		Refunds and payments into retirement fund	4-305
See MOTOR VEHICLES		Uniforms and equipment	4-204
Authority to install	40-616	Vested with powers and duties of Metropolitan Police	4-201
Fees, collection and deposit	40-616	Voluntary retirement, payment of benefits, conditions	4-508
Rules and regulations	40-616	Watchmen provided by United States Government known as	4-201
<b>PARKINGS</b>		<b>PARK ROAD</b>	
For sale or for rent sign, placing on prohibited, penalty	7-1001	Twentieth Street Northwest, name changed in part	7-107 note
Jurisdiction and control vested in Commissioners	8-110	<b>PARKS AND PLAYGROUNDS</b>	
Sewers and watermains, right to lay in, streets dedicated by landowners	7-117	See NATIONAL CAPITAL PARK AND PLANNING COMMISSION; NATIONAL PARK SERVICE	
Sidewalks, right to lay on, streets dedicated by landowners	7-117		
Space between street lines and building restriction lines	7-117		
Turning over care to private owners	8-108		
Use, business streets	8-108		



PARKS AND PLAYGROUNDS—Continued		Sec.	PARKS AND PLAYGROUNDS—Continued		Sec.
Acquisition of land by commission	8-102	8-106	Georgetown Reservoir, transfer of jurisdiction to Commissioners		8-142
Advice of Commission of Fine Arts		8-102	George Washington Memorial Parkway and Playground System		8-101 note
Appropriation authorized		8-106	Glover Parkway and Children's Playground		8-162, 8-163
Approval by President of agreement with Maryland and Virginia		8-103	Acceptance of dedicated land		8-162
Contracts reserving limited rights to grantor, approval by President		8-103	Made part of park system		8-163
Eminent domain authorized		8-102	Improvement of unimproved public spaces, restrictions		8-108
Purchase authorized		8-102	Land acquired for, lease pending need for use		8-105
Reservation of limited right by grantor authorized		8-103	Life interest, grantor of land reserving		8-103
Right to acquire in Maryland and Virginia		8-102	Meridian Hill Park		8-112
Anacostia Park		8-161	Montrose Park		8-113
Anacostia River, lands along, clearing title of United States		8-104	National Capital Park and Planning Commission		8-101
Appropriation for acquisition		8-106	Annual report to Congress		8-107
Amount, limitation		8-106	Budget estimate		8-107
Paid from revenues of District		8-106	Creation, powers and duties		8-101
Purposes for which used		8-106	Highway commission abolished, powers and duties transferred		8-108
Archbold Parkway		8-101 note	Members of commission and personnel		8-101
Areas between sidewalk line, minimum size		8-108	National Capital Park Commission abolished and duties transferred		8-101
Assignment of control to Commissioners of District		8-106	National Zoological Park		8-134
Bathing pools and beaches		8-168—8-171	Plans and specifications for buildings and bridges, supervision		8-134
Bathing beach and dressing room, tidal reservoir		8-168	"Park system" defined		8-108
Construction authorized		8-169	Parkway connecting Potomac, Zoological, and Rock Creek Parks		8-158—8-160
Cost of construction limited		8-169	Acquisition of additional land authorized		8-159
Fee for use and enjoyment		8-170	Acquisition of land		8-158
Management and control		8-170	Amount to be expended limited		8-158, 8-159
Number authorized		8-169	Exclusion of land authorized		8-159
Operation through welfare and recreational association, special fund		8-171	Part of park system		8-160
Beach Parkway		8-121—8-123	Reimbursement of Federal Treasury, interest		8-158
Dedication and transfer of exchanged land		8-122	Parkways eminent domain, part of cost assessed as benefits		7-218
Exchange of land between United States and private owners		8-121	Piney Branch Parkway part of system		8-152
Extension northward, purposes		8-121	Playgrounds		
Secretary of Interior, exchange of land		8-121, 8-123	Public ground, use		8-128
Buildings			Volunteer services, acceptance authorized, condition		8-132
Construction, authorization by Congress required		8-133	Washington Aqueduct, use in part as playground		8-130
Plans, preparation, supervision		8-134	Potomac Park		8-153—8-157
Business streets			Artificial body of water, expenditure of funds for construction prohibited		8-155
Designation by Commissioners		8-108	Boathouses, licensing		8-157
Use of parking		8-108	Control by Director of National Park Service		8-154
Use of sidewalks for business purposes		8-108	Department of Agriculture, temporary occupancy		8-156
Canals, filling in, jurisdiction over land		8-145	Establishment		8-153
Commissioners of District, transfer of jurisdiction to Director of National Park Service		8-135	Lagoon, expenditure of appropriation for construction prohibited		8-155
Director		8-108	Speedway, construction, authorization by Congress required		8-155
Transfers of jurisdiction to Commissioners of District		8-135	Potomac River, lands along, clearing title of United States		8-104
District authorities transferring jurisdiction to Federal authorities		8-115, 8-116	Regulations, power of President to prescribe		8-108
Eminent domain		7-218, 8-102	Reservation part of system		8-108
Amount of cost and expenses assessed as benefits		7-218			
Federal authorities transferring jurisdiction to District authorities		8-115, 8-116			
Fort Davis made part of park system		8-125			
Fort Dupont made part of park system		8-125			



PARKS AND PLAYGROUNDS—Continued		Sec.	PARKS AND PLAYGROUNDS—Continued		Sec.
Reservations			Whitehaven Parkway—Continued		
Number 8 transferred to Commissioners of District, purpose		8-138	Using lands in parcel "B" for street and highway purposes		8-118
Number 32, jurisdiction transferred to Commissioner		8-136	Widening of roadways		8-127
Number 185, use for park purposes authorized		8-126	PAROLE		
Number 290, jurisdiction transferred to Commissioners		8-137	See INDETERMINATE SENTENCE AND PAROLE		
Widening of roadway of street or avenue		8-127	From District Training School		32-626
Rock Creek, lands along, clearing title of United States		8-104	From National Training School for Boys		32-820, 32-821
Rock Creek Park	8-146	8-151	PARTIES		
Acceptance of dedication of land		8-150	See ABATEMENT AND REVIVOR; PROCESS		
Arable ground, rental		8-149	Bonds and undertakings in District Court		28-2403
Area	8-146, 8-147	8-147	Competency as witnesses		14-301
Bridle paths		8-148	Death of, abatement and revivor		12-101
Buildings in grounds, rental		8-149	Ejectment		16-501
Dedication of land		8-146	Joint obligations		13-401
Director of National Park Service, control over		8-148	Consolidation of several actions		13-401
Establishment		8-146	Joinder		13-401
Footway		8-148	Jurisdiction, parties residing in different districts		11-306, 11-307
Part of park system		8-148	Partition		16-1301
Roadway		8-148	Patent law, infringement cases		11-307
Rock Creek, protection of flow of water		8-151	Adverse parties residing in plurality of districts		11-307
Rules and regulations for government and care, power to adopt	8-131, 8-143	8-143	Adverse party residing in foreign country		11-307
Sidewalks, rules and regulations, power to adopt		8-144	Issuance and service of writ		11-307
Small parks at street intersections included in system		8-111	Publication to heirs where death is uncertain		13-113
Space in streets and avenues set aside by commission		8-108	Public contractor's bond, actions on		1-804
Squares 612, 613 made part of system		8-124	Quo warranto		16-1601
Streets, setting aside portion for use as parks	7-1206	8-129	Required to testify regarding usurious payments		28-2706
Temporary structures, licensing		8-129	Substitution of, abatement and revivor		12-102
Theodore Roosevelt Island	8-164	8-167	Third party made defendant in interpleader		13-217
Acceptance of gift authorized		8-164	Uncertainty as to death		
Administered by Director of National Park Service		8-164	Publication to those who would be devisees		13-113
Designation in documents, records, and maps		8-167	Publication to those who would be heirs		13-112
Maintenance and development		8-164	Service by publication		13-113
Means of access, provision for		8-165	United States as party, United States District Court		11-306
Monument, erection, approval of plan		8-166	Wrongful death actions		16-1201
Traffic, enforcement of regulations by director		8-109	PARTITION		
Vehicles, enforcement of regulations by director		8-109	Accounting by tenant in common		16-1301
Water Street		8-114	Assignment of dower		16-1302
Closing for park purposes, consent of property-owners		8-114	Disability of parties, effect		16-1301
Right of entry to repair sewers		8-114	Granting		16-1301
Whitehaven Parkway	8-117	8-120	Laying off dower		16-1302
Abandonment of highway or alley		8-117	Partes		16-1301
Adjustment of boundaries, purposes		8-117	Sale of indivisible property, discharge from dower		16-1306
Closing of highway and alley in parcel "A"		8-117	Sale of land encumbered by dower		16-1305
Exchange of land with property-owners authorized		8-119	Widow of tenant in common		16-1303
Plats, preparation, approval and recordation		8-120	Wife of tenant in common protected		16-1304
			PARTNERS		
			Competency as witnesses		14-304
			Sales between, under Uniform Sales Act		28-1101
			PARTNERSHIPS		
			Actions		41-126—41-129
			Against special partners, may be brought after judgment against general partners		41-128



PARTNERSHIPS—Continued		Sec.	PARTNERSHIPS—Continued		Sec.
Actions—Continued			Limited partnerships—Continued		
Brought against general partners	41-118, 41-126		False statements render all generally liable		41-109
Merger of debts in judgment	41-129		General partners as defendants		41-118
Acts which are deemed a dissolution	41-115		"General partners," defined		41-102
Architects, certificate of registration	2-1016		General partners' liability		41-102
Assignment with preferences, void as to creditors	41-123		General partners, liability to each other and to special partners for management		41-131
Capital	41-107, 41-121, 41-122		Judgments prima facie evidence of debt		41-129
Affidavit of payment by special partners	41-107		Management, liability of general partners for		41-131
Reduction of, to be made good by special partners	41-122		Merger of partnership debts in judgments		41-129
Withdrawal by special partners	41-121		Names to be used		41-117
Certified Public Accountant	2-901		Prerequisites to formation		41-108
Composition with creditors by one partner	41-201—41-204		Publication of terms		41-110
Debts not merged in judgment against one or more partners	41-129		Affidavit of publication, filing		41-112
Definition of "person" includes	49-204		Failure to publish renders it a general partnership		41-111
Dentistry, practicing	2-311		Where published		41-110
Dissolution and payment of debts	41-201—41-204		Purpose of forming		41-101
Partner compromising with any creditor	41-201		Reduction of capital, amount to be restored		41-122
Does not affect other partners' right of contribution	41-204		Renewal, requirements		41-113
Memorandum of exoneration, use	41-202		Special partners	41-102—41-104	
Other partners not discharged	41-203		Assenting to assignments with preferences, effect		40-124
Separate compromise is discharge to maker	41-201		Becoming general partners, joinder in suits		41-126
Separate composition with creditor	41-201		Creditors preferred over		41-125
Discharges maker	41-201		Dividends		41-121
Does not affect other partners' right of contribution	41-204		Drawing interest when capital is not reduced thereby		41-121
Does not discharge other partners	41-203		Failure to restore interest or profits which impair capital, effect		40-124
Memorandum of exoneration	41-202		Joined in suits, recovery of costs when not liable		41-127
Dissolution by acts of parties	41-130		Liability		41-104
General partners	41-101—41-131		Liability to suit after suit against general partners		41-128
Accounting to general and special partners	41-131		Number		41-103
Actions to be in name of	41-126		Right to advise as to management		41-120
Conduct of business in name of	41-117		Right to examine		41-120
Liability	41-102		Transacting business, effect		41-120
Transaction of business by	41-120		Use of name in firm, effect		41-119
Giving notice of dishonor	28-711		Withdrawal of investment prohibited		41-121
Income tax	47-1525		Suits against general and special partners		41-127
Partnership not taxable as such	47-1525		Transaction of business to be by general partners only		41-120
Partnership return required, contents	47-1525		Use of special partner's name in firm, effect		41-119
Partners taxable separately	47-1525		Voluntary dissolution, grounds and requirements		41-130
Insolvency, dissolution by	41-130		Limited partners, "special partners" defined		41-102
Limited partnerships	41-101—41-131		Name	41-117, 41-119	
Affidavit, contents and filing	41-107		For conduct of limited partnership		41-117
Assignments with preferences void as to creditors	41-122		Use of special partner's, effect		41-119
Certificate of partnership	41-105, 41-106		Plumber's licenses		2-1405
Acknowledgment	41-106		Podiatry practitioners		2-707
Contents	41-105		Preferences void in insolvency		41-123
Recording	41-106		Presentment of negotiable instrument for payment		28-608
Creditors preferred over special partners	41-125		Priority of claims on insolvency		41-125
Dissolution	41-115, 41-116, 41-130				
Acts after, deemed those of general partnership	41-116				
Acts constituting	41-115				
Failure to publish terms, to be deemed general partnership	41-111				
Failure to renew renders it a general partnership	41-114				



		Sec.			Sec.
<b>PARTY WALLS</b>			<b>PAYMENT—Continued</b>		
Certificate of location, admissibility in evidence		1-628	Indorsing on obligations, effect of Statute of Frauds		12-305
Certification and recording of location by surveyor		1-627	Payment of judgment stays execution		15-111
Less than 7 inches of adjacent ground occupied, payment for ground occupied		1-625	Pleading in bar		13-213
Locating and placing by surveyor		1-628	Tax payments to show adverse possession		16-515
Use by adjoining owner, contribution	1-625, note		<b>PAYMENT OF MONEY INTO COURT</b>		
Wall extending over line more than 7 inches, payment for ground occupied		1-626	Cases in which permitted		16-1401
<b>PASSENGER MOTOR VEHICLES FOR HIRE</b>			Judgment for defendant		16-1402
See <b>PUBLIC UTILITIES</b>			Payment as compensation or amends		16-1401
Blanket bond in lieu of insurance		44-301	Payment of costs incurred		16-1401
Employers' Liability Act	44-401—44-405		Payment on account of claim		16-1401
Insurance required		44-301	Pleading no greater debt or damage		16-1401
Licenses		47-2331	Rights of plaintiff		16-1402
Operations on regular routes exempt from insurance requirements		44-301	<b>PAY ROLL</b>		
Sinking fund in lieu of insurance		44-301	Employee of District signing by mark, witnesses	1-315	
Violation of insurance requirements, penalty	44-301		<b>PEACE OFFICERS</b>		
<b>PASTEURIZATION</b>			See <b>POLICE DEPARTMENT</b>		
See <b>MILK AND MILK PRODUCTS</b>			<b>PEARS</b>		
<b>PATENT MEDICINES</b>			Standard box, dimensions		10-115
Sellers subject to druggist license	47-2308		<b>PEAS</b>		
<b>PATENTS</b>			Shelled peas, standard container		10-115
Adverse parties residing in plurality districts	11-307		<b>PECK</b>		
Adverse party residing in foreign country	11-307		Fruit and vegetable container, standard dimension		10-115
Jurisdiction of United States District Court	11-307		<b>PEDDLERS</b>		
Parties to actions	11-307		Badge		47-2336
Adverse parties living in plurality of districts	11-307		Drugs and medicines, vending prohibited		2-615
Adverse party residing in foreign country	11-307		License		47-2336
Issuance and service of writ	11-307		Weighing and measuring devices, duty to have tested		10-103
<b>PATERNITY</b>			<b>PENALTIES AND FORFEITURES</b>		
Jurisdiction of Juvenile Court	11-907		See <b>CRIMINAL OFFENSES</b>		
<b>PATHOLOGY</b>			Jurisdiction of United States District Court	11-306	
Dentist, examination for license	2-308		Limitation of actions		12-201
Examination of applicants for license	2-108		Plural breaches, pleading		13-205
Podiatry license examinations	2-705		<b>PENITENTIARY</b>		
<b>PAUPERS</b>			See <b>INDETERMINATE SENTENCE AND PAROLE; PRISONS AND PRISONERS</b>		
See <b>POOR PERSONS</b>			<b>PENNSYLVANIA AVENUE</b>		
Delivery of bodies to medical and dental schools	2-203—2-207		Buildings fronting, plans, approval by Commission of Fine Arts		5-410
<b>PAVING</b>			Height of building		5-405
See <b>STREETS AND OTHER WAYS</b>			<b>PENNSYLVANIA AVENUE BRIDGE</b>		
<b>PAWNBROKERS</b>			Maintenance and repair, apportionment of cost		7-504
Commissioners' power to provide for inspection	1-224		<b>PENNSYLVANIA RAILROAD COMPANY</b>		
Police Department, power and duties	4-147—4-150		Operating lessee of Philadelphia, Baltimore, and Washington Railroad Company		7-1225
Examination of books and premises	4-148		Switches and sidings, construction authorized		7-1225—7-1229
Pawned or pledged property, right of examination	4-149		Grade crossing elimination law unaffected		7-1228
Penalty for interfering with officer	4-150		Grade crossings, approval of Commissioners		7-1227
Property taken from pawnbrokers delivered to property clerk	4-159		Overhead bridge required over proposed street		7-1227
Supervision and inspection	4-147				
<b>PAYMENT</b>					
See <b>PAYMENT OF MONEY INTO COURT</b>					
Creditors' claims, decedents' estates	18-519				



**PENNSYLVANIA RAILROAD COMPANY—** Sec.

Continued

Switches and sidings, construction authorized—Continued	
Plan subject to approval of Commissioners	7-1226
Right to amend or repeal law reserved	7-1229
Specific squares and lots designated	7-1225

**PENSIONS**See **POLICE AND FIREMEN'S RELIEF FUND****PEOPLE'S COUNSEL**See **PUBLIC UTILITIES**

Appointment by President	43-205
Counsel of Public Utilities Commission	43-205

**PERISHABLE PROPERTY**

Sale in attachment and garnishment	16-314
Sale or delivery to owner by property clerk	4-162, 4-164

**PERJURY**See **STATUTE OF FRAUDS**

Board of Assistant Assessors	47-606
Board of Equalization and Review	47-606
Building associations	26-404
Conviction of, disqualification from holding office	1-316
Criminal offense, penalty	22-2501
Definition	14-102
False oaths before Board of Examiners in veterinary medicine	2-802
Fraternal benefit associations, death claims in	35-913
Healing Arts Practice Act, false swearing to evade provision	2-128
Indictment, sufficiency of	23-204
Marriage license, use in obtaining	30-110
Oaths administered by district attorney	11-1002
Personal property tax return affidavit	47-1203
Police and Firemen's Retiring and Relief Board, false swearing before	4-510
Public Utilities Commission	43-712
Subornation of, penalty	22-2501
Indictment, sufficiency	23-205
Trial boards of Police and Fire Departments, false swearing before	4-602
Trust, title and indemnity companies	26-320

**PERMITS**See **BUILDING LINES; BUILDINGS**

Barbed-wire fences, construction outside fire limit	7-1102
Building permits	
Cancelation for nonuse, refund of fee	5-430
Certificates and transcripts, fees for issuing determined by Commissioners	5-429
Erection, construction, reconstruction, or alteration of buildings or structures	5-422
Gas mains, laying in street	7-1204
Sewer, gas and water connections	1-726
Street improvements under permit system	7-608, 7-609
Trenches, cutting in streets and highways	7-615, 7-616

**PERPETUITIES**

Freeholds	45-104
Personal property, application of rule	45-102 note
Real property	45-102, 45-103

**PERSON**

Definition	
Boiler Inspection Act	1-702
Negotiable instruments law	28-101

**PERSONAL INJURIES**

District employees, payment of compensation	1-311
---	-------

**PERSONAL PROPERTY**See **PROPERTY; TAXATION AND FISCAL AFFAIRS**

Appeal of assessments	47-2403
"Die without issue" meaning in deed or will	45-205
"Die without leaving issue" meaning in deed or will	45-205
Intangible personal property, taxes abolished	47-1201 note
Intangible, situs under inheritance and estate tax laws	47-1629
Interpretation of instruments	45-205
"Have no issue," meaning in deed or will	45-205
Lien of artisan or mechanic	38-124—38-126
Mechanic's lien	38-124—38-126
Perpetuities, application of rule against to personalty	45-102 note
Real property provisions made applicable	45-823
Estate	45-801, 45-823
Perpetuities	45-102—45-104
Posthumous children	45-204
Recordation of instruments	42-101—42-103
Acknowledgments	42-101
Bills of sale	42-101
Chattel mortgages	42-101
Conditional sales contracts	42-103
Effect of recording	42-103
Effect of unrecorded sales	42-103
Manner of indexing and filing	42-103
Minimum purchase price where recording required	42-103
Deeds of trust to secure debt of chattels	42-101
Effect of recording	42-101
Effect of unrecorded instruments	42-101
Fees	42-102, 42-103
Filing and indexing sufficient	42-102
Need not be transcribed	42-102
Public inspection	42-102
Time for recording	42-101
Sale for personal property taxes	47-1301, 47-1302
Taxation of personal property	47-1201, 47-1214

**PETITIONS**See **PLEADINGS**

Adoption	16-201
Claimant to attached property	16-318
Counter security, petition of surety	16-2001
Divorce	16-416
Juvenile Court	11-908
Mandamus	16-1001
Sureties, relief from suretyship	16-2001

**PETIT LARCENY**See **LARCENY**



**PETTY LOANS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS;****CREDIT UNIONS**

Agent for service of process	26-601
Annual statement to Commissioners of the District	26-604
Attorneys' fees on foreclosure limited	26-608
Bond	26-603
Suits on	26-603
Sureties	26-603
Commissioners of the District to make rules and regulations	26-611
Complaints against lenders	26-606
Hearings	26-606
Enforcement by Commissioners of the District	26-611
Firms exempted from regulation	26-610
Licenses	26-601
Application, contents	26-602
Date and expiration	26-602
Refusal to grant	26-606
Residence requirement	26-601
Revocation	26-606
Tax	26-601
Maximum interest	26-605
Includes all fees and expenses	26-605
Not to be deducted in advance	26-605
One percentum per month	26-605
Penalty for excessive interest	26-605
Maximum loan two hundred dollars	26-605
Notice of application, publication	26-602
Penalties	26-606
Penalties in contracts prohibited	26-609
Protest and hearings on applications	26-602
Register of loans	26-604
Rules and regulations	26-611
Statement to borrower, contents	26-605
Unlicensed lending at more than 6% per annum unlawful	26-601

**PHARMACY**See **NARCOTIC DRUGS**

Application for license	2-602
Filing required, contract, verification	2-602
Proof of qualification	2-602
Bicarbonate of soda, exception from act	2-601
Board of Pharmacy	2-607—2-609
Annual report to Commissioners	2-608
Bond of treasurer	2-607
Compensation of members	2-609
Examination of applicants for license	2-607
Expenses of board, payment	2-609
General grant of powers and duties	2-608
Meetings	2-607
Number of members	2-607
Oath of office	2-607
President	2-607
Qualifications of members	2-607
Recognition of schools and colleges	2-602
Record, duty to keep, prima facie evidence	2-608
Removal of members by Commissioners	2-607
Seal	2-607
Secretary	2-607
Term of office, expiration date	2-607
Treasurer	2-607

**PHARMACY—Continued**

Borax, exception from act	2-601
Concentrated lye, exception from act	2-601
Corporation counsel, duty to enforce regulatory law	2-617
Cream of tartar, exception from act	2-601
Credit for attending school or college of pharmacy	2-602
Dentists excepted from law	2-601
Directions for use of drug on label	2-614
Display of permit or license	2-606
Druggist license	47-2308
Drug stores	2-601
Compounding drugs and medicines, licensed pharmacist	2-601
Licensed pharmacists, employment required	2-601
Sale of drugs and medicines, licensed pharmacists	2-601
Sale of drugs regulated	2-601
Educational requirement	2-602
Examination as to qualifications	2-602
Fees under licensing law	2-609
Examination for license	2-609
Licensing pharmacist from other jurisdiction	2-604
Paid to treasurer of board	2-609
Permit for sale of poisons	2-609
Renewal of license	2-609
Renewal of permit for sale of poisons	2-609
Fraud or false representation in obtaining license, effect	2-606
Fraudulent representation to obtain drugs prohibited	2-613
Hearings before board	2-606
Appeal to Court of Appeals	2-606
Books and papers, power to compel production	2-606
Disobedient witnesses, punishment for contempt	2-606
Report of findings to Commissioners	2-606
Revocation of license or permit	2-607
Subpenaing of witnesses	2-606
Witnesses, power to call and examine	2-606
Household ammonia, exception from act	2-601
Investigations after revocability of licenses	2-605
Issuance of license	2-603
Fraud in obtaining, void	2-606
Labels, directions for use of drug on	2-614
Medicine	
Compounder's license	47-2308
Dispenser's license	47-2308
Minimum age	2-602
Narcotics, selling, restrictions	2-610, 2-611
Olive oil, exception from act	2-601
Patent medicines, exception from act	2-601
Penalty for violating law	2-617
Permits to sell drugs and poisons	2-601
Duration	2-601
Registration of sale	2-601
Renewal	2-606
Sale to minors under 18 prohibited	2-601
"Pharmacists," use of title by unlicensed person prohibited	2-616
Physicians and surgeons excepted from law	2-601



<b>PHARMACY—Continued</b>	<b>Sec.</b>	<b>PHRASES</b>	<b>Sec.</b>
Poisonous compounds and combinations, restrictions and regulations on sale	2-612	See DEFINITIONS	
Poisons covered by act enumerated	2-612	<b>PHRENOLOGISTS</b>	
Poisons, sale, regulation, conditions and exceptions	2-601	See FORTUNE TELLERS	
Practicing without license prohibited	2-601	<b>PHYSICIANS AND SURGEONS</b>	
Practitioners from other states or countries	2-604	See HEALING ARTS PRACTICE ACT; MEDICINE AND OSTEOPATHY	
Licensing, condition	2-604	Birth reports	6-301—6-304
Reciprocity	2-604	Blindness in new-born child, preventative treatment	6-201—6-204
Prescriptions open to inspection	2-614	Board of Examiners	2-106, 2-109, 2-110
Preservation of prescription	2-614	Examination of applicants for license	2-114—2-117
Proprietary medicines, exceptions from act	2-601	Commissioners may accept voluntary medical service for charitable institutions	32-1006
Refusal to renew licenses permits	2-606	Competency as witnesses	14-308
Hearing, witnesses	2-606	Definition under uniform narcotic drugs law	33-401
Record kept of reason	2-606	Examination as basis for licensing to practice	2-122
Secretary empowered to administer oaths at hearings	2-606	Educational requirements	2-122
Renewal of licenses	2-606	Proof required of applicant	2-122
Revocation of license	2-605	Examining children, in Juvenile Court	11-926
Ground	2-605	False statements regarding life insurance applications	35-719
Hearing by Board of Pharmacy	2-605	Fire Department	4-404
Procedure	2-606	Information divulged to, in unlawfully obtaining narcotic drugs, not privileged communication	33-420
Reports of superintendent of police	2-605	Jury service, exemptions	11-1420
Sal ammoniac, exception from act	2-601	Licenses to practice	2-119—2-122
Sal soda, exception from act	2-601	Relicensing of licensees under prior law	2-120
Superintendent of police, duty to enforce regulatory law	2-617	Medical officers in federal service, exemption from Healing Arts Practice Act	2-119
Treasurer of board	2-607, 2-608	Narcotic drugs, prescription	2-610, 2-611
Bond	2-607	Contents	2-610
Financial report to Commissioners	2-608	Giving to drug addicts prohibited	2-611
Selection	2-607	Improper prescriptions, issuance, evidence	2-611
Veterinarians excepted from law	2-601	Narcotic drugs, professional use	33-409
Wholesalers, excepted from law	2-601	Optometry Licensing Act, exception from	2-520
<b>PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY</b>		Park police, medical attendance	4-206
Assessment of real property	47-718	Pharmacy Law, exception from	2-601
Branch tracks, spurs, or sidings, construction authorized	7-1218	Physicians to poor, maximum compensation	32-1005
Approval by National Capital Park and Planning Commission	7-1218	Police surgeons	4-106, 4-124
Consent of Commissioners	7-1218	Number appointed	4-106
Plats or charts filed	7-1218	Qualifications and duties	4-124
Buzzards Point, extension for development	7-1216	Reciprocity as basis for license to practice	2-121
Compensation for use of facilities, powers of Interstate Commerce Commission	7-1223	<b>PHYSIOLOGY</b>	
Construction of tracks through public ground and streets, restriction	7-1219	Dentist, examination for license	2-308
Cost of paving or repairing street, payment	7-1222	Healing arts, examination of applicants for license	2-108
Eminent domain proceedings to acquire property authorized	7-1221	Podiatry license examinations	2-705
Grade Crossing Act unaffected	7-1220	<b>PIANOS</b>	
Navy Yard tracks, sale and transfer to company	7-1217	District trading in old pianos	1-819
Pennsylvania Railroad Company operating lessee	7-1225	<b>PIERCE MILL ROAD</b>	
Reservation of right to repeal or amend law	7-1224	Closing in part authorized, consent of property owners	7-123
Switches, extensions, and turnouts authorized	7-1216	<b>PILOTS</b>	
Use of facilities by other railroads	7-1223	Fire Department	4-404
<b>PHOSPHORUS</b>		Salary	4-405
Poisonous compounds, sale, restrictions	2-612	<b>PIMPING</b>	
<b>PHOTOGRAPH</b>		See HOUSES OF PROSTITUTION; WHITE SLAVERY	
Dental hygienists applying for license	2-323		
Dentist applying for license	2-307		



<b>PINEY BRANCH PARKWAY</b>		Sec.	<b>PLATS—Continued</b>	Sec.
Part of park system of District	8-152		Approval by Commissioners	1-613
<b>PINEY BRANCH ROAD</b>			Building lots surveyed, certification, witnesses	1-620
Closing in part authorized, consent of property-owners	7-123		Certification by surveyor	1-616
Eminent domain, assessment of benefits and damages	7-219		Certification, conditions precedent to recording	1-616
Dismissal of proceedings, discretion, damages exceeding benefits	7-219		Closing and changing alleyways within square on petition of property-owners	7-306
<b>PINKERTON DETECTIVE AGENCY</b>			Closing and readjusting of streets and highways	7-403, 7-404
Employees of, employment prohibited	1-317		Preparation, contents	7-403
<b>PINNACLES</b>			Recording in office of surveyor	7-404
Height, fireproof construction	5-405		Closing of streets and other ways	7-124
<b>PINT</b>			Deeds and other documents, description of property	1-622
Liquid half-pint, dimension	10-119		Deficiency or excess in number of feet in lot or lots, apportionment, procedure	1-624
Liquid pint, dimension	10-119		Existing alleys closed by dedication of new alleys	7-303
<b>PIPE-LINES</b>			Landowners laying out highways, approval of plat	7-109
See <b>PUBLIC UTILITIES</b>			Lines of subdivisions of squares shown	1-610
"Pipe-line company" defined	43-121		Michigan Avenue, abandoned and relocated portions	7-130
<b>PLACE</b>			Order of survey, execution by surveyor	1-617
Protest of bill of exchange	28-932		Philadelphia, Baltimore, and Washington Railroad Company, branch tracks and spurs	7-1218
<b>PLACES OF AMUSEMENT</b>			Private surveys, certification	1-618
Inspection, fees, fixed by Commissioners	5-316		Proceedings to establish building lines	5-201, 5-202
<b>PLACES OF ASSEMBLAGE</b>			Property of District	1-106
Fireproof construction, when required	5-403		Records of surveyor's office	1-605
Unlawful assembly, penalty	22-1107		Regulation of planning and subdividing of land by Commissioners	1-613
<b>PLANNING COMMISSIONS</b>			Restricted areas, plans submitted to Commission of Fine Arts	5-411
See <b>NATIONAL CAPITAL PARK AND PLANNING COMMISSION; ZONING REGULATIONS</b>			Preparation by Commissioners and National Capital Park and Planning Commission	5-411
<b>PLANTS</b>			Scale on which drawn	1-610
Cutting down, destroying, penalty	22-3108		Squares or lots belonging to United States	1-612
Boundary trees	22-3109		Square used for business enterprise, closing of alleys	7-305
Growing crops	22-3108		Streets and other public ways, dedication	1-614
Trees	22-3108		Whitehaven Parkway	8-120
Trees on public grounds	22-3110		<b>PLAYGROUNDS</b>	
Diseases of			See <b>PARKS AND PLAYGROUNDS</b>	
Common carriers transporting plants, liability limited	6-905		<b>PLAYING IN STREETS</b>	
Control measures	6-904		Penalty	22-1108
Destruction of infected plants	6-904		<b>PLEADINGS</b>	
Penalty for violating control law	6-905		See <b>ABATEMENT AND REVIVOR; JOINT CON-TRACTS; PARTIES; PETITIONS; PROCESS</b>	
Police Court, power to issue warrants for search and seizure	6-904		Abbreviations commonly used, permissible	13-203
Powers of Secretary of Agriculture	6-904		Actions at law, transfer from equity	13-215
Shipment of plants into or out of District, regulation and control	6-904		Actions in equity, transfer from law court	13-215
Quarantine and control administration, insect pests, control, right of entry	6-904		Actions to recover fines, etc., under adopted Maryland laws	13-222
Plant diseases, investigation, right of entry	6-904		Admission of part of claim	13-216
Weed control	6-901, 6-903		Final judgment to be entered	13-216
<b>PLATS</b>			Trial and judgment on remainder	13-216
See <b>STREETS AND OTHER WAYS</b>			Amendment	13-301
Abandonment or readjustment of streets	7-113		After judgment, generally	13-305
Alley dwellings, slum-clearance and improvement work, approval of plan	5-104		After judgment, on verdict	13-306
Alleys and minor streets, condemnation proceedings	7-313, 7-326		As basis for continuance	13-302
Cost of making, payment	7-326			



PLEADINGS—Continued	Sec.	PLEADINGS—Continued	Sec.
Amendment—Continued		Motion for new trial—Continued	
Certification of record	13-309	Insufficient evidence as basis	13-221
Costs	13-303	When granted	13-221
Generally	13-301	Names and technical words commonly used,	
Marriage of party	12-112	permissible	13-203
Mistakes of clerk, limitation	13-308	Non est factum to be verified, exception	13-211
Petty errors by clerk	13-304	Payment pleaded, as bar	13-218
Same form only, rule	13-307	Penalty for failure to use English language	13-202
Substituted affidavits	13-301	Perfection, demurrer joined	13-207
Supplemental affidavits	13-301	Petty mistakes	13-311
Writs of error	13-312	Pleading over does not waive demurrer	13-209
Answers		Plural breaches	13-205
Affidavits in attachment and garnishment		Bonds	13-205
proceedings	16-307	Damages to be determined by jury	13-205
Garnishee's answer	16-317	Judgment or demurrer, confession, nihil	
Immaterial, harmless error	13-206	dicit	13-205
Return to writ of habeas corpus	16-807	Penal sums	13-205
Barring res judicata	13-220	Plural pleas permitted	13-212
Criminal matters, limitation	13-319	Proceedings	
Defects after verdict, harmless error	13-316, 13-317	After verdict, mistakes	13-315
Demurrers	13-205—13-207, 13-209	To be in common, legible hand or print-	
Denial of another's official character to be		ing	13-203
under oath	13-213	To be in English	13-202
Dilatory pleas to be verified	13-210	Quo warranto	13-320
Eminent domain proceedings, land for streets	7-203	Replevin	16-1808—16-1810
Amendments, power of court	7-212	Replevin suits, Municipal Court	11-728
Petition, contents	7-203	Res judicata, barring	13-220
English language required	13-201	Set-off	16-1902
Equitable defenses in actions at law	13-214	Supplemental affidavits	13-301
Figures commonly used, permissible	13-203	Transfers from law to equity courts, or vice	
Interpleader	13-217	versa	13-215
Affidavit required	13-217	Unfounded equitable actions, damages	13-219
Order of court	13-217		
Safe-keeping of subject	13-217	PLEDGES	
Third party to be made defendant	13-217	See PAWNBROKERS	
Where applicable	13-217	Corporate stock	29-222
Joinder of counts	13-208		
Liquidated and unliquidated claims	13-208	PLUMBING	
Tort and contract relating to single trans-		Applicants for license	2-1403
action	13-208	Certificate of good moral character	2-1403
Joinder of parties, joint obligations	13-401	Qualifications	2-1403
Judgment on demurrer	13-206	Bond of plumbers	2-1404
Criminal causes exempted	13-206	Amount	2-1404
Form disregarded, exception	13-206	Power of Commissioners to require	2-1404
Immaterial traverses disregarded, excep-		Corporate licenses	2-1405
tion	13-206	Criminal offenses	1-725
Lack of profert, exception	13-206	Violation of regulations, penalty	1-725
Jurisdiction mistaken, transfer to proper		Employment of unlicensed plumber or gas	
court	13-215	fitter prohibited	2-1407
Amendments to conform to practice to be		Examination of applicants for license	2-1402
made	13-215	Gas fitter	2-1402
Testimony before transfer to stand, if		Master plumber	2-1402
preserved	13-215	Examination upon application of owner, oc-	
Lost instruments, actions on at law	13-204	cupant, or complainant	1-727
Bond as in equity required	13-204	Excavations, permits	1-726
Not to be dismissed	13-204	Fees for connection, payment to tax collector	1-726
Mandamus	13-320	Fees for licenses and renewals thereof	2-1405
Mistakes		License issued for part of year	2-1405
After judgments, effect	13-313	Maximum and minimum amount	2-1405
Variance after verdict	13-314	Payable annually	2-1405
When not cause for reversal	13-310	Inspector	1-724
Motion for new trial	13-221	Appointment by Commissioners	1-724
Exceptions as basis	13-221	Duties	1-724
Excessive damages as basis	13-221	Enforcement of regulations	1-727



**PLUMBING—Continued****Inspector—Continued**

Inspection of houses in course of erection	1-727
Under direction of Commissioners	1-727
Issuance of license	2-1402
License required	2-1406
Minimum age	2-1403
Notice to comply with regulations	1-725
Partnership license	2-1405
Penalty for violating licensing law	2-1408
Permits for connection	1-726
Fees, Commissioners' power to fix	1-726
Remission of fees to federal treasury	1-726
Sewer, gas and water	1-726
Plumbing board	2-1401
Employee of District of Columbia to be member	2-1401
Journeyman plumber member	2-1401
Master plumber member	2-1401
Quorum	2-1401
Regulations, Commissioners' power to adopt	1-725
Regulations, sale or exchange of copies	49-110
Revocation or suspension of license	2-1405
Sewers, regulations, powers of Commissioners	1-725

**PODIATRY**

"Advertising" defined	2-718
Altering diploma, certificate or license, penalty	2-714
Annual registration of podiatrists	2-710
Application for license	2-705
Citizenship	2-705
Contents	2-705
Minimum age	2-705
Proof of qualifications	2-705
Verification	2-705
Board of Podiatry Examiners	2-701—2-704
Annual report to Commissioners	2-702
Appointment	2-701
Books and papers, power to compel production	2-703
Disobedient witnesses, punishment for contempt	2-703
Expenses not to exceed receipts	2-709
Health officer ex officio member	2-701
Investigator, right to employ	2-704
Nominations for appointive member	2-701
Per diem of members	2-709
President	2-702
Qualifications of members	2-701
Quorum	2-702
Record of proceedings and action	2-702
Rules and regulations, power to adopt	2-702
Seal	2-702
Secretary-treasurer	2-702
Term of office	2-701
Vacancy filled for unexpired term	2-701
Witnesses, power to call and examine	2-703
Corporate name, practicing under prohibited	2-707
Corporation counsel, duties	2-704
Definitions	2-711, 2-718
Diploma, selling or offering to sell, penalty	2-714
Display of license and registration card required, penalty	2-713

**PODIATRY—Continued**

Duplicate license to practice, issuance	2-706
Examination of applicants for license	2-705
Subjects in which examined	2-705
Exemptions from act	2-712
Expenses of administering law, funds for payment	2-709
False or assumed name, practicing under prohibited	2-707
False representation concerning degree	2-715
Fees under licensing law	2-709
Annual registration	2-710 ✓
Certificates issued by Board	2-709
Delinquent annual registration, penalty	2-710 ✓
Duplicate license, issuance	2-709
Examination fee	2-709
License issued by reciprocity	2-709
Reentry of practice	2-710 ✓
Impersonating another, penalty	2-715
Issuance of license to practice	2-705, 2-706
License, selling or offering to sell, penalty	2-714
Physicians and surgeons, exception from act	2-712
Police Court, jurisdiction over violations of law	2-704
Postgraduate classes or schools	2-716
Approval by Board	2-716
Operating without approval, penalty	2-716
"Practice of" defined	2-711
Practicing under false name, penalty	2-715
Practicing under true name required	2-707
Practicing without license, penalty	2-717
Practitioners from other states or countries	
Exception concerning	2-712
Licensing without examination, reciprocity	2-705
Record of credentials of licensee	2-702
Register of practitioners	2-710
Registration of licenses with health officer	2-706
Reinstatement of podiatrists	2-710 ✓
Revocation or suspension of license	2-707, 2-708
Advertising podiatrists	2-707
Appeal to Court of Appeals	2-708
Decision of courts based on evidence	2-708
Duration, determination by court	2-708
Ground	2-707
Petition, verification	2-708
Procedure	2-708
United States District Court, jurisdiction	2-707
Rules and regulations adopted by Board	2-719
Effective date	2-719
Notice given	2-719
Publication	2-719
Secretary-treasurer of Board	2-702
Bond	2-702
Enforcement of law	2-704
Subpenas, power to issue	2-703
Student of podiatry, exception concerning	2-712
Superintendent of police, investigation and prosecution, duties	2-704
"Unprofessional conduct" defined	2-707
Violations of law, general penal provisions	2-717

**POISONS**

See FOOD AND DRUGS; NARCOTIC DRUGS	
Antidote given on label	2-612
Application of Pharmacist Licensing Law	2-601



POISONS—Continued		Sec.	POLICE AND FIREMEN'S RELIEF FUND—		Sec.
Concentrated lye, sale		2-601	Continued		
Display of permit or license to sell		2-606	Medical examination of pensioners		4-512
Federal law applicable to District, reference		p. 680	Discretion of Commissioners, powers		4-512
Fraudulent representations to obtain prohibited		2-613	Failure to appear after notice, reduction or discontinuance of relief		4-512
Household ammonia, sale		2-601	Park police brought within provisions		4-515
Label, content		2-612	Reappointment to force, redeposit of refund		4-504
Labels on containers		2-601	Reduction or discontinuance of allowance		4-513
Minors under 18, sales to, restrictions		2-612	Conviction of crime		4-513
Permits to sell, duration		2-601	Habitual drunkenness		4-513
Prescription of physician, poison label		2-612	Lewd or lascivious conduct		4-513
Registration of sale		2-601	Refund, separation from force other than by retirement		4-504
Regulation of sales under pharmacy law		2-601	Retired member, active service during emergencies, power to require		4-514
Sale of poisonous compounds and combinations		2-612	Retiring and relief board		4-510
Calomel, exception concerning		2-612	Applications for relief of widows and children		4-510
Enumeration of poisons covered by act		2-612	Certification of physical condition to board		4-510
Inquiry as to purposes for which purchased		2-612	Consideration of retirement and relief cases		4-510
Liniments, exception concerning		2-612	Corporation counsel made member		4-510
Notice given of poisonous character		2-612	Creation		4-510
Ointment, exception concerning		2-612	False swearing before, perjury		4-510
Oxide or carbonate of zinc, exception		2-612	Notice given member to appear before board		4-510
Paregoric, exception concerning		2-612	Oaths, power to administer		4-510
Preservation of record of sales		2-612	One member from each department		4-510
Record kept, exception		2-612	Park police member retiring		4-511
Sale to physicians, dentists, and veterinarians excepted		2-612	Powers of Commissioners		4-510
Sulphide of antimony, exception		2-612	Power to call witnesses		4-510
Sale to minors under 18 prohibited		2-601	Report of finding to Commissioners, approval or disapproval		4-510
Selling or compounding, licensed pharmacist		2-601	White House police being retired		4-511
<b>POLICE AND FIREMEN'S RELIEF FUND</b>			Rewards, disposing of for benefit of fund		4-129
Accounting for expenditures		4-503	Rewards, when part of relief fund		4-503
Age retirement		4-507	Sources of fund		4-503
Amount of benefits, conditions		4-507	Temporary disability allowance		4-506
Amount of pension relief, determination by Commissioners		4-505	Hospitalization		4-506
Apportionment of appropriations between District and Federal Government		4-516	Injury or disease in course of employment		4-506
Appropriations from fund, purposes		4-503	Medical and surgical services		4-506
Arrears of pension, granting prohibited		4-517	Medical certificate, approval		4-506
Collections paid to collector of taxes		4-502	Total disability allowance		4-507
Creation		4-501	Amount, conditions		4-507
Death benefits for dependents		4-507	Unclaimed balances in hands of property clerk		4-159, 4-160
Children reaching 16, termination		4-507	Proceeds of auction sales		4-160
Children under 16, monthly allowance		4-507	Property of decedents		4-159
Marriage after retirement, widow and children excluded		4-507	Unclaimed property in hands of property clerk, proceeds of sales		4-503
Remarriage of widow, determination		4-507	Voluntary retirement		4-508
Widow's monthly allowance		4-507	Age and service requirements		4-508
Death while in service, repayment of contributions		4-504	Limitation on aggregate amount for fiscal year		4-508
Deductions from salaries of members		4-503, 4-504	Member of Secret Service Division, transfer of funds		4-508
Refunds and redeposits		4-503, 4-504	Retirement compensation, amount		4-508
Deficiencies in fund, making good from treasury		4-503	White House police, participation in fund		4-304
Deposited in Treasury to credit of District		4-502	Contributions to fund, percentage of basic salary		4-304
Discontinuance of allowance, grounds		4-513	Retirement, service with Metropolitan or park police forces counted		4-304
Donations to fund		4-503			
Equalization of allowances		4-517			
Fines imposed on members, part of		4-503			
Funeral expenses, amount contributed toward payment		4-509			



POLICE COURT		Sec.	POLICE COURT—Continued		Sec.
Alley Dwelling Law violations, jurisdiction	5-102		Jurisdiction—Continued		
Anatomical Law, violations, prosecution, jurisdiction	2-209		Exceptions	11-602	
Appeals, Court of Appeals	17-103		Noncapital crimes and offenses, concurrent with District Court	11-602	
Apportionment of business	11-601		Offenses against municipal ordinances	11-602	
Attachés prohibited from receiving pay from professional bondsmen	23-603		Offenses against regulations	11-602	
Bailiffs	11-623		Prosecutions for violating public auction permit law	47-2207	
Birth Returns Law, violation, prosecution, jurisdiction	6-304		Prosecutions under minimum wage law	36-420	
Boiler Inspection Act violations, jurisdiction	1-714		Traffic regulation violations	40-603	
Building, construction, public work loan	9-204, 9-208		Violation of license requirements	47-2346	
Clerk	11-620		Violation of personal property tax laws	47-1303	
Administering oaths and affirmations	11-622		Jury	11-617	
Appointment	11-620		Compensation	11-617	
Audit of accounts quarterly	11-627		Deficiencies in panels	11-618	
Bond	11-620		Eligibility of juror	11-618	
No fees for services	11-620		Marshal to have charge	11-618	
To deposit collections weekly	11-625		Qualifications	11-617	
To pay over to collector unclaimed funds	11-626		Tenure	11-617	
To receive fines, penalties, costs, forfeitures	11-625		Jury trials, waiver	11-616	
To render itemized statements of deposits	11-625		Mattress Law violations, jurisdiction	6-605	
Commitment in lieu of fine payment	11-616		Minor employees	11-623	
Concurrent jurisdiction with Criminal Courts	11-322		Nuisances, unsafe condition, abatement, jurisdiction	5-504	
Dentistry Law, violations, jurisdiction	2-305		Podiatry Law violation, jurisdiction	2-704	
Deputy clerks	11-621		Police officer to be authorized to take bail when clerks not available	23-610	
Administering oaths and affirmations	11-622		Powers	11-606	
Appointment	11-621		Bonds	11-606	
Number	11-621		Contempt, penalties	11-606	
Electrical Wiring Inspection Law, jurisdiction and violations	1-720		Execution on forfeited recognizances	11-607	
For sale or rent sign, prosecution of violations of law	7-1001		Issue process	11-606	
Inferior Court of District	11-101		Punish embezzlers of bond money	11-606	
Judges			Power to examine, hold, commit to bail	11-602	
Acts to be deemed those of court	11-601		In cases cognizable in District Court	11-602	
Administering oaths, taking acknowledgments	11-608		In cases cognizable therein	11-602	
Appointment by President	11-601		Probation officers, appointment	24-101	
Authority to take acknowledgment of deeds	45-402		Process		
Number	11-601		Attestation	11-613	
Qualifications	11-601		Return	11-611	
Removal for cause	11-601		Seal	11-613	
Salaries	11-601		Service		
Search warrants for narcotic drugs	33-414		Fees	11-614	
Term	11-601		In cases cognizable in District Court	11-612	
Vacancies filled by District Court	11-610		In ordinance violations	11-611	
Judgment final, exception	11-619		Prosecutions by information	11-616	
Juries, impaneling	11-1407		Quarters and equipment	11-601	
Jurisdiction	11-602		Reports of Court of Appeals, copies furnished judges	11-206	
Affrays, concurrent with District Court	11-604		Salaries	11-624	
Assault, concurrent with District Court	11-605		Seal	11-608	
Bawdy-houses, concurrent with District Court	11-604		Sessions, hours	11-601	
Cruelty to children or animals	11-603		Steam and Other Operating Engineers Licensing Law, violation, jurisdiction	2-1506	
Witness fees	11-603		Trial by court, effect	11-616	
Disorderly houses, concurrent with District Court	11-604		Unclaimed funds	11-626	
			Warrants issued by Municipal Court judge	11-705	
			Weeds, failure to cut after notice, prosecutions, jurisdiction	6-903	
			Weights and Measures Law violation, jurisdiction of prosecution	10-134	
			Witness fees	11-615	



## POLICE DEPARTMENT

See DETECTIVES; PARK POLICE; POLICE AND FIRE-MEN'S RELIEF FUND; WHITE HOUSE POLICE	
Age limits on original appointments, determination	4-107
Age retirement allowance, conditions	4-507
Appointment of personnel	4-103
Power vested in Commissioners of District	4-103
Arrears of pension, granting prohibited	4-517
Arrest	4-138, 4-140—4-143
Felony suspected, right of entry	4-141
Making without warrant, circumstances authorizing	4-140
Neglect to make arrest, penalty	4-143
Notice given to lieutenant	4-142
Unnecessary force, use prohibited	4-176
Warrants for, execution	4-138
Written return by lieutenant	4-142
Arrest on civil process, exemption from	4-128
Assignment to duty, power vested in Commissioners of District	4-103
Assistant superintendent	4-106
Bond	4-109
Exception from Civil Service Act	4-103
Rank of inspector	4-106
Return to rank of captain	4-103
Salary	4-108
Selected from among captains	4-103
Auctioneers of watches and jewelry, supervisory powers	4-147, 4-148, 4-150
Awards for meritorious service	4-701—4-704
Annual awards made	4-701
Appropriation for medals	4-704
Committee to make awards, members, service without compensation	4-702
Gold and silver medals	4-701
Holders of medals, preference in promotion	4-703
Board of assistant assessors, subpoenas, service	47-606
Board of equalization and review, subpoenas, service	47-606
Bond, when required of officers	4-100
Captains	4-106
Bond	4-109
Command police precincts	4-106
Duties	4-106
Number	4-106
Salary	4-108
Charges against members	4-121
Alteration or amendment authorized	4-121
Preferred by major and superintendent	4-121
Civil-service rules applicable to personnel	4-103
Assistant superintendents excepted	4-103
Inspectors excepted	4-103
Major and superintendent excepted	4-103
Classification of officers	4-106
Classification of privates	4-103, 4-106
Class 2, two years' service	4-103
Class 3, privates of over three years' service	4-103
Probationary period, one year	4-103
Vacancies in classes 2 and 3, promotions from class 1	4-103

## POLICE DEPARTMENT—Continued

Commissioners of district, duty to protect health and preserve safety of people	4-119
Compromise of felony or unlawful act prohibited, penalty	4-175
Conspiracy to obstruct conduct or operation of force, penalty	4-125
Constables, police to have common-law powers of, exception	4-136
Control of traffic, use of motor fuel tax proceeds, limitation	47-1901
Crossing policemen	4-112—4-114
Detailing special police to street railway crossings and intersections required	4-112
Made members of Metropolitan police force	4-113
Rights, benefits, and privileges	4-113
Subject to same rules and regulations as regular policemen	4-113
Substitution of other members of force for crossing duty	4-114
Death benefits for widow and children, conditions	4-507
Death while in service, repayment of contributions to relief fund	4-504
Detectives, specific appointment required	4-168
Detective work, detailing private	4-110
Discontinuance of relief allowance, grounds	4-512, 4-513
Dismissal of member, grounds, powers of Commissioners	4-121
Additional privates	4-121
Opportunity given for hearing	4-121
Special policemen	4-121
Doubtful establishments, supervisory powers	4-147—4-150
Equalization of relief allowances	4-517
False personation as police officer	22-1306
Felony suspected, right of entry	4-141
Fine, power of Commissioners to levy	4-121
Free transportation of policemen by street railways	44-213
Funeral expenses of deceased member, amount contributed from relief fund	4-509
Gaming-houses, complaints, right of entry, searches and seizures	4-145
Hackmen and cartmen, supervisory powers	4-147, 4-150
Houses of ill-fame, complaints, right of entry, searches and seizures	4-145
Inspectors	4-106
Duties	4-106
Exception from Civil Service Act	4-103
Number	4-106
Return to rank of captain	4-103
Salary	4-108
Selected from among captains	4-103
Intelligence office keepers, supervisory powers	4-147, 4-148, 4-150
Jury duty, exemption from	4-128, 11-1420
Laws discriminating between persons in administration of justice, nonenforcement	4-139
Leaves of absence	4-179, 4-180
Emergency, cancelation	4-180
Leave in lieu of Sunday	4-180



POLICE DEPARTMENT—Continued		Sec.	POLICE DEPARTMENT—Continued		Sec.
Leaves of absence—Continued			Matrons—Continued		
Number of days allowed with pay		4-179	Number appointed		4-116
Sick leave		4-180	Qualifications		4-118
Lewd and obscene public amusement places, complaints, right of entry, searches and seizures		4-145	Recommendation for appointment required		4-118
Licensed vendors, supervisory powers		4-147, 4-148, 4-150	Medical examination of pensioners		4-512
Lieutenants		4-106	Discretion of Commissioners		4-512
Bond		4-109	Failure to appear after notice, reduction or discontinuance of relief		4-512
Number		4-106	Memorial fountain to members		4-901
One designated as harbor master		4-106	Metropolitan police, appointment to White House police		
Salary		4-108	Appointment to lower grade prohibited		4-303
Written return of arrest		4-142	Filling of vacancies		4-302
Lotteries, complaints, right of entry, searches and seizures		4-145	Metropolitan Police district		4-101, 4-102
Major and superintendent		4-106	Coextensive with District of Columbia		4-102
Advances to by disbursing officer		47-114	Creation		4-101
Bond		4-109	Precincts		4-102
Cartridges for shooting galleries, prescribing		47-2322	Subdivisions		4-102
Civil service rules, excepted from		4-103	Military duty, exemption from		4-128
Dental law, enforcement, duties		2-305	Motor vehicles not to be transferred to other departments		40-504
Duty of force to respect and obey		4-126	Mounted inspectors		4-106
Firearms, caliber for shooting galleries, prescribing		47-2322	Municipal building, detailing policeman as watchman prohibited		4-111
Healing Arts Practice Act, duty to enforce		2-137	Oath of office		4-104
Healing arts practitioner, petition for revocation of license		2-123	Officers or members, power of Commissioners to dismiss, grounds		4-121
Healing arts, unlawful practice, petition to enjoin		2-132	Ordinance discriminating between persons in administration of justice, nonenforcement		4-139
Licenses requiring approval			Park police		4-201—4-208
Auctioneer licenses		47-2309	Pawnbrokers, supervisory powers		4-147—4-150
Billiard parlors		47-2321	Permitting suspect to escape arrest		4-175
Bowling alleys		47-2321	Personal injuries, compensation, exceptions		1-311
Dealers in firearms, deadly weapons		47-2340	Police Code		4-177, 4-178
Detective agencies		47-2341	Force and effect		4-178
Guides		47-2338	Publication authorized		4-177
Massage establishments		47-2311	Police report, as notice of injury		12-208
Medicated bath establishments		47-2311	Precincts, commanded by captains		4-106
Pool halls		47-2321	Private detectives		
Private detectives		47-2341	Bond		4-169—4-171
Russian bath establishments		47-2311	Duty on making arrest		4-172
Turkish bath establishments		47-2311	Law governing		4-168—4-176
Nurses, petition for revocation or suspension of certificate		2-407	Penalty for acting without complying with law		4-173
Oaths, power to take and administer		4-123	Police laws and regulations applicable		4-174
Persons and property seized in raids, duties		4-146	Reports		4-174
Pharmacists' licenses, investigation as to revocability		2-605	Privates		
Pharmacy Law, duty to enforce		2-617	Annual increase in salary		4-108
Podiatry Law, investigations and prosecutions, duties		2-704	Basic salary		4-108
Powers and duties		4-106	Classification		4-103
Preferring of charges against members of board		4-121	Detailing for detective work		4-110
Quarterly reports to Commissioners, contents		4-127	Increase in salary denied, service unsatisfactory		4-802
Salary		4-103	Maximum salary		4-108
Matrons		4-116—4-118	Outstanding efficiency, additional pay		4-802
Duties		4-117	Removal for inefficiency		4-802
Female prisoners, examination and care		4-117	Salary schedule		4-801
Lost or abandoned children, duties		4-117	Probationary period		4-103
			Counted in determining eligibility for promotion, retirement, and pension		4-105
			Precedes permanent appointment		4-105
			Retention of probationer in service, effect		4-105
			Unsatisfactory probationers, discharge		4-105



POLICE DEPARTMENT—Continued		Sec.	POLICE DEPARTMENT—Continued		Sec.
Promotions, medal-holders, preference		4-703	Residence of members		4-132
Property clerk	4-151	4-159	Living outside District, maintenance of telephone required		4-132
Accused acquitted, return of property seized		4-157	Maximum distance from Capitol building		4-132
Custody of stolen, lost, or abandoned property		4-152	Resignation from		
Decedents' property, custody, sale, disposition of proceeds		4-159	Month's notice in writing		4-125
Depositions, power to certify		4-155	Permission of Commissioners required		4-125
Lost or abandoned property		4-152	Retired member, active service during emergencies, power to require		4-514
Oaths, power to administer		4-155	Retiring and relief board, members, powers and duties, report of findings		4-510
Office created		4-151	Rewards for police services, acceptance prohibited, exception		4-129
Perishable property, sale or delivery to owner	4-162, 4-164		Failure to give notice of receipt cause for removal		4-129
Property coming into possession of police		4-159	Meritorious and extraordinary services		4-129
Property taken from pawnbrokers		4-159	Police and firemen's relief fund		4-129
Property uncalled for within year deemed abandoned		4-167	Rules and regulations for government of force		4-121
Record of lost, stolen, or abandoned property, contents		4-153	Power of Commissioners to adopt		4-121
Record of property turned over by police		4-159	Salaries		
Return of property on proof of ownership		4-156	Increase denied, service unsatisfactory		4-802
Return of property to owner pending trial, security	4-163	4-165	Privates		4-801
Sale at auction of unclaimed	4-160, 4-161		Salaries of officers and privates		4-108
Animals, notice		4-161	Searches and seizures		4-145
Motor vehicles		4-160	Destruction of property seized		4-146
Notice, publication		4-160	Duties of major and superintendent		4-146
Property unclaimed within six months	4-160		Prosecution of persons arrested		4-146
Unclaimed balances paid into police-men's fund		4-160	Search warrants, execution		4-138
Sale of unclaimed property, notice	4-160, 4-161		Second-hand dealers, supervisory powers	4-147, 4-148, 4-150	
Stolen property		4-152	Sergeants		4-106
Third persons claiming property, custody pending acquittal or conviction of accused		4-158	Privates detailed for detective work		4-110
Unclaimed animals, sale		4-161	Salary		4-108
Use of property as evidence		4-166	Special policemen	4-112	4-115
Vested with powers of notary public		4-154	Appointment to guard corporate or individual property		4-115
Public buildings belonging to United States, protection		4-120	Corporation or individual applying for appointment		4-115
Public grounds belonging to United States, protection		4-120	Crossing policemen	4-112	4-114
Reappointment of removed member prohibited		4-121	Emergencies, appointment without pay, powers, and duties		4-133
Reappointment to force, redeposit of refund in relief fund		4-504	Park Police, appointment, powers and duties		4-208
Receiving compensation from person arrested or liable to arrest prohibited		4-175	Payment of compensation by corporation or individual		4-115
Record books		4-134	Strikes, membership in organizations advocating prohibited		4-125
Complaint-books, contents, name and residence of complainant		4-134	Subpenas in civil cases, exemption from		4-128
Lost, missing, or stolen property		4-134	Supervisory powers over certain businesses	4-147	4-150
Service records of members of force, contents		4-134	Surgeons		4-124
Records kept			Duties		4-124
Open to public inspection		4-135	Insane persons in custody, examination and attendance		4-124
Reports of police kept and bound		4-137	Number		4-106
Returns kept and bound		4-137	Qualifications		4-124
Reduction of relief allowance, grounds	4-512, 4-513		Subject to rules and regulations		4-124
Refund from relief fund on separation from force		4-504	Suspected private banking-houses, supervisory powers	4-147, 4-148, 4-150	
			Suspension of members with or without pay, power of Commissioners		4-121
			Telephone, maintenance, when required		4-132



POLICE DEPARTMENT—Continued		Sec.	POLICE REGULATIONS—Continued		Sec.
Temporary disability allowance		4-506	Elevators, regulations for construction and operation, penalty		1-229
Medical, surgical, or hospital services		4-506	Firearms, explosives, and weapons		1-227
Sickness or injury in course of employment		4-506	Outdoor signs		1-231
Total disability retirement allowance, conditions		4-507	Penalty for violation, effective date		1-225
Trial board	4-121, 4-122, 4-601—	4-604	Protection of life, health and property		1-226
Abolition by Commissioners		4-122	Publication		1-225
Amendment or alteration of charges preferred		4-121	Sale and exchange of copies		49-110
Appeals from		4-122	Violation, power of Commissioners to provide penalties		1-224
Books and papers, power to compel production		4-601	<b>POOL HALLS</b>		
Compelling obedience to process by witness		4-603	Hours when operation is prohibited		47-2321
Conclusiveness of findings		4-122	License		47-2321
Creation by Commissioners		4-122	Approval by major and superintendent of police		47-2321
Existing rules and regulations continued in effect		4-122	Fee		47-2321
False swearing before, perjury		4-602	<b>POOLS</b>		
Fees of witnesses		4-601	Gambling		22-1508
Oath of members		4-604	Bookmaking		22-1508
Oaths, power of chairman to administer		4-122	Election		22-1508
Purposes for which created		4-122	Racing		22-1508
Review of sentences and findings by Commissioners		4-122	Included in definition of "partnership" under income tax law		47-1543
Rules of procedure, Commissioners' power to amend		4-122	<b>POOR PERSONS</b>		
Subpenas, power to issue		4-601	See PAUPERS		
Time limit for appeal from finding		4-122	Legal residents, indigent poor, return to District		3-110
Witnesses, power to compel attendance		4-601	Medical care and treatment		3-110
Uniforms	4-130, 4-131		Nonresident indigent persons, return to place of residence		3-110
Appropriations for clothing, amount per annum		4-131	<b>PORT OF ENTRY</b>		
Failure to comply with rules, removal from force		4-130	Georgetown		1-107
Rules for uniform clothing		4-130	<b>POST-DATED NEGOTIABLE INSTRUMENT</b>		
War Department furnishing worn mounted equipment		4-181	Title acquired as of date of delivery		28-113
Veterinarian's place of business, right to inspect		2-807	Validity		28-113
Voluntary retirement		4-508	<b>POSTHUMOUS CHILDREN</b>		
Age and service requirements		4-508	Birth defeats future estate dependent on parents' death without heirs, issue or children		45-204
Limitation on aggregate retirement during fiscal year		4-508	Take as though living at ancestor's death where future estates are limited to heirs, issue or children		45-204
Member of Secret Service Division		4-508	<b>POSTMASTERS</b>		
Retirement benefits payable, amount		4-508	Jury service		11-1420
Warrants for arrest, execution		4-138	<b>POST-OFFICE</b>		
White House police	4-301—	4-306	Depositing notice of dishonor in post-office		28-717, 28-718
Withdrawal from force, restrictions		4-125	Depositing in branch office or letter box sufficient		28-718
Withholding information of crime prohibited		4-175	Effect		28-717
Witnesses in criminal proceedings		4-144	<b>POTATOES</b>		
Place of detention		4-144	Mislabeled	22-3409—	22-3412
Unable to give security for appearance, detention		4-144	Accurate grading		22-3409
<b>POLICE POWER</b>			Penalty		22-3412
Alleys, powers of Commissioners		1-623	Seed potatoes, not applicable to		22-3411
Commissioners of District		1-224	Sign to show grade		22-3410
<b>POLICE REGULATIONS</b>			<b>POTOMAC PARK</b>		
Building regulations		1-228	Artificial body of water, expenditure of funds for construction prohibited		8-155
Dogs, muzzling		1-230	Boathouses, licensing		8-157
Domestic animals, impounding		1-230			



<b>POTOMAC PARK—Continued</b>	<b>Sec.</b>	<b>PRESCRIPTIONS—Continued</b>	<b>Sec.</b>
Buildings fronting, plans, approval by Commission of Fine Arts	5-410	Narcotics	2-610, 2-611
Control by Director of National Park Service	8-154	Open to inspection	2-614
Department of Agriculture, temporary occupancy	8-156	Preservation by druggist	2-614
Establishment	8-153	<b>PRESENTMENT FOR PAYMENT</b>	
Lagoon, expenditure of appropriation for construction prohibited	8-155	See <b>NEGOTIABLE INSTRUMENTS</b>	
Parkway connecting with Zoological and Rock Creek Park	8-158, 8-160	<b>PRESIDENT OF BOARD OF COMMISSIONERS</b>	
Speedway, construction, authorization by Congress required	8-155	Board of Commissioners of District	1-207
<b>POTOMAC RIVER</b>		<b>PRESIDENT OF UNITED STATES</b>	
Chief of Engineers of United States Army, Potomac River bank, control in part	9-101, 9-102	Alley dwellings, power to purchase, condemn, or acquire lands and buildings, purpose	5-103
Drawbridges, submarine cables, use	7-1231	Delegation of authority	5-104
Jurisdiction over	1-101	Commissioners of deeds, appointment	1-401
Lands along, clearing title of United States	8-104	Commissioners of District, appointment	1-201
Throwing or depositing matter into, penalty	22-1702	Contracts acquiring land for parks, grantor reserving limited rights, approval	8-103
<b>POULTRY</b>		Land acquired from Maryland by Virginia for park purposes, approval of contract	8-102
Garbage, use in feeding	6-503	National Capital Park and Planning Commission, citizen member, appointment	8-101
Keeping and running at large, power to regulate	1-224	Notaries public, appointment	1-501
<b>POUNDMASTER</b>		Park system of District, regulations, power to prescribe	8-108
Authority to make arrests	47-2008	Subdivision of squares and lots belonging to United States	1-612
Impounding dogs	47-2003	Suspension of prevailing wage rate law	1-815
Sale of impounded dogs	47-2008	<b>PRESUMPTION</b>	
<b>POWER OF ATTORNEY</b>		Consideration to support negotiable instruments	28-201
Deeds not to be executed or acknowledged by attorney	45-401	Corporation stock book entries	29-226
Fiduciary, nonresident, to give power to Register of Wills	20-118	Date of negotiable instrument	28-112
Married woman's acknowledgment, notaries' power to take	1-511	Date of negotiable instrument presumed correct	28-112
Notary's power to take and certify acknowledgment of	1-511	Delivery of negotiable instrument	28-117
Fee	1-514	Effect of bulk sales law	28-1705
Married women	1-511	Holding in due course, negotiable instrument	28-409
<b>POWERS</b>		Negotiation of instruments before maturity	28-316
See <b>REAL PROPERTY</b>		Place where negotiable instrument is indorsed	28-317
<b>PRACTICE</b>		<b>PRESUMPTION OF DEATH</b>	
Definition, Healing Arts Practice Act	2-101	Absence for seven years	14-501
<b>PRACTICE OF DENTISTRY</b>		Person presumed dead found living, effect	14-502
See <b>DENTISTRY</b>		<b>PRETENSES</b>	
Definition	2-315	See <b>FALSE PRETENSES</b>	
<b>PRACTICE OF LAW</b>		<b>PRETZELS</b>	
Register of Wills not to practice	19-410	Exception from weight regulations concerning bread	10-113
<b>PRACTICE OF PODIATRY</b>		<b>PRICE FIXING</b>	
Definition	2-711	Cooperative association operations	29-842
<b>PRECINCTS</b>		<b>PRIMA FACIE EVIDENCE</b>	
Metropolitan Police district	4-102	See <b>EVIDENCE</b>	
Commanded by captains	4-103	<b>PRINCE GEORGES COUNTY, MARYLAND</b>	
<b>PREEXISTING DEBT</b>		Garbage incinerators of District, use, terms and conditions	6-511
Consideration for negotiable instrument	28-202	<b>PRINTING</b>	
<b>PRESCRIPTIONS</b>		Controlled by written provisions, negotiable instruments	28-118
Copy furnished prescribing position or person to whom given	2-614	<b>PRISON BREACH</b>	
Directions for use	2-614	See <b>CRIMINAL OFFENSES</b>	



**PRISONS AND PRISONERS**

See INDETERMINATE SENTENCE AND PAROLE; INSANE CRIMINALS; PROBATION	
Board of Public Welfare	
Control over Washington Asylum and Jail, reformatory, workhouse	24-409
Supervision of employees of Washington Asylum and Jail	24-411
Supervision of employees of workhouse, reformatory	24-419
Supervisory powers	3-106, 3-107
Visitorial powers	3-111
Commitment of prisoners by marshal	24-413
Commutation of fines	24-404
Cost of care of District convicts in Federal penitentiaries	24-424
Deduction of time for good conduct	24-405
Delivery of prisoners to marshal	24-414
Detention of United States prisoners	24-410
District Training School, control and management by Board of Public Welfare	3-106
Employment of prisoners	24-412
Escape, penalty	22-2601
Industrial Home Schools, control and management by Board of Public Welfare	3-106
Inmates of workhouse and reformatory to be released in District	24-406
Investigation of institutions by Board of Public Welfare	3-112
Commissioners of District ordering	3-112
Powers and duties of board	3-112
Jail, Lorton, Virginia, public works loan for construction	9-204
Jail officers and employees, corrupt conduct, penalty	22-2602
Jurisdiction of prosecutions	24-401
Maintenance of District of Columbia inmates	24-423
Payments to be "miscellaneous receipts"	24-423
Reimbursement of United States	24-423
Maintenance of jail	24-422
National Training Schools	
Binding out or apprenticing of children	3-117
Commitment of children under 17	3-121
National Training School for Boys, contracts for maintenance of boys	3-110
National Training School for Girls, management and control by Board of Public Welfare	3-106
New institutions, submission of plans to Board of Public Welfare	3-112
Place of imprisonment	24-401
Cumulative sentences, rule	24-401
Designation by Attorney General	24-425
Reformatory of the District	24-402
Jurisdiction by Commissioners of District	24-402
Transfers to by attorney general	24-402
Term between six months and one year, jail	24-401
Term not exceeding six months, workhouse or jail	24-401
Term over one year, designation by attorney general	24-402
Term over one year, penitentiary	24-401
Police matrons, female prisoners, duties	4-117

Sec.

**PRISONS AND PRISONERS—Continued**

Sec.

Professional bondsmen, right to communicate with	23-606
Reformatory, management and control by Board of Public Welfare	3-106
Registration records	3-109
Sale of products of workhouse, reformatory	24-418
Subsistence of federal prisoners by attorney general	24-421
Superintendent	3-106, 3-107
System of accounts	3-109
Transfers	
Attorney General's authority	24-425
Jail to workhouse	24-403
Penitentiary to reformatory	24-402
Washington Asylum and Jail to workhouse	24-403
Washington Asylum and Jail	24-407
Grounds of naval and army magazine added	24-420
Jail and asylum combined into one institution	24-407
Management and control by Board of Public Welfare	3-106
Sentences to jail or asylum to be served	24-407
Superintendent	24-411
Accountable for safe-keeping of prisoners	24-415
Annual report to attorney general	24-416
Delivery of prisoners to marshal	24-414
Failure of Congress to appropriate for does not repeal authority	24-417
To execute judgments in capital cases	24-417
Workhouse, management and control by Board of Public Welfare	3-106

**PRIVATE BANKS**

See BANKS AND OTHER FINANCIAL INSTITUTIONS

**PRIVATE CONDUITS**

Conditions for laying	43-1301
Congressional reservation of right to alter, amend or repeal provisions relating to conduits	43-1303
Failure to remove unlawfully placed conduits, penalty	43-1302

**PRIVATE DETECTIVES**

See DETECTIVE AGENCIES; DETECTIVES

**PRIVATE EMPLOYMENT AGENCIES**

See EMPLOYMENT AGENCIES

Definition	47-2101
License law	47-2101—47-2111

**PRIVIES**

Penalty for violation of law	6-704
Regulation of construction and maintenance by Commissioners authorized	6-703
Sewer connections, when obligatory	6-701
Unconnected with sewer, permit for maintenance	6-702

**PRIZE FIGHTS**

See BOXING EXHIBITIONS

Penalty	22-1105
"Pugilistic encounter" defined	22-1106



PROBATE	Sec.	PROBATE COURT TERM—Continued	Sec.
See WILLS		Powers—Continued	
PROBATE COURT TERM		Jurisdiction over wills	11-504
Appeal, proceedings not stayed, when	11-511	Letters ad colligendum, grant and revocation	11-504
Appointing Association for Works of Mercy as guardian of girl under 18	32-104	Letters of administration, grant and revocation	11-504
Apprentices		Letters of guardianship, grant and revocation	11-504
Jurisdiction over	36-102	Letters testamentary, grant and revocation	11-504
Protection of	36-103	Not exclusive of equity court	11-504
Approval of custody and control by Association for Works of Mercy	32-101	Settlement of accounts prima facie evidence	11-504
Arbitration	11-520	Property in hands of property clerk, administration	4-159
Award conclusive	11-520	Revocation of letters, accounting, failure to make	11-515
Consent of parties	11-520	Seal for court	11-505
Association for Works of Mercy, appointment as guardian	32-103	Seal for register of wills	11-505
Authority to take acknowledgment of deed	45-402	Sessions, weekly	11-502
Bonds and undertakings	28-2403	Special term of United States District Court	11-311, 11-501
Clerk, Register of Wills	19-409	Summons	
Compelling performance of duties	11-514	Failure to appear, penalty	11-506
Revocation of letters	11-514	Failure to appear, sequestration	
Summons	11-514	Accounting	11-508
Decree admitting will to probate as evidence	11-519	Allowance	11-508
Depositions	11-519	Bond	11-508
Enforcement of judgments and decrees	11-516	Return of property	11-508
Enforcement of orders	11-516	Failure to make return	11-507
Exceptions	11-519	Failure to serve process	11-507
Fees and costs	11-1503	Power to issue	11-506
Fiduciary's bond or undertaking	28-2403	Return	11-508
Investment of funds	11-513	Service	11-507
Court's power to order	11-513	Witnesses, refusal to give evidence, penalty	11-506
Failure to obey order of court, revocation of letters	11-513		
Issues not relating to wills	11-517	PROBATION	
Notice of trial	11-517	See INDETERMINATE SENTENCE AND PAROLE	
Time of trial	11-517	Continuance of	24-104
Judgment for costs		Department of, Juvenile Court	11-924
Authority to render	11-518	Discharge from	24-104
Execution	11-518	Fire department, appointment to force as private	4-405
Judgment or decree, enforcement by attachment, sequestration	11-512	Modification of order	24-104
Jurisdiction	11-501	Police department appointees, probationary period	4-103
Limitation	11-512	Probationers	24-102
Jurisdiction, plenary	11-503	Observing rules prescribed for conduct	24-102
Wills	11-503	Receiving statement of conditions of probation	24-102
Admission to probate	11-503	Reporting to probation officer as directed	24-102
Devising District of Columbia real estate	11-503	Probation officers	24-101
Presented for probate	11-503	Appointment by District Court	24-101
New trial	11-519	Appointment by Police Court	24-101
Orders, enforcement by attachment, sequestration	11-512	Investigations, report	24-103
Orphans' Court, replaces	11-501	Juvenile Court	11-922
Plenary proceedings	11-509	Quarters, supplies for officers	24-105
Attachment and sequestration	11-510	Return of absconding probationers	11-924 note
Costs	11-510	Revocation of order	24-104
Issues	11-510	Rules for granting	24-102
Judgment or decree	11-510	Supervision of probation, Juvenile Court	11-922
Regulation	11-509		
Powers	11-501, 11-504	PROCEEDINGS SUPPLEMENTARY	
Enforce distributions	11-504	See EXECUTIONS	
Enforce rendition of inventories and accounts	11-504		



**PROCESS**

See PUBLICATION OF NOTICE	
Coroner serving in lieu of marshal	11-1208
Corporations, service by publication	13-104
Eminent domain, land for streets	7-204
Patent cases, issuance and service of writ	11-307
Persons non compos mentis	13-107
Personal service	13-107
Service on committee	13-107
Police Court	11-611
Attestation	11-613
Return	11-611
Service	11-613
Fees	11-614
In cases cognizable in District Court	11-612
In ordinance violations	11-611
Probate court term	11-506—11-508
Publication	13-108
Absent from District	13-108
Affidavit of absence	13-109
Affidavit of mailing copy	13-111
Claims to property in District	13-108
Divorce	13-108
Form	13-110
Infant, absent or nonresident	13-111
Nonresidents	13-108
Parties, uncertainty as to death	13-113
Diligent search required	13-113
Heirs and devisees	13-113
Partition	13-108
Persons non compos mentis	13-112
Return of summons prerequisite	13-109
Unknown heirs, devisees	13-108
Service	13-102
Alien fire, casualty or marine insurance company	35-1327
Foreign corporations	13-103
Foreign fire, casualty or marine insurance company	35-1327
Infant defendants	13-105
Personal	13-105
Person with whom he resides	13-105
Infants	13-106
Evading, effect	13-106
Persons secreting to evade, liability	13-106
Inmate of District Training School	32-627
Nonresidents, personal service without District	13-108
Sunday service	13-102
Declared void	13-102
Liability of server	13-102
Service by coroner in lieu of marshal	11-1208
Service on District, method	1-901
Service on unauthorized fire, casualty or marine insurance company	35-1327
Summons	13-101
Form	13-101
Validity of service on superintendent of insurance	35-423

**PROCTORS**

See ATTORNEYS	
Fees and costs	11-1501

**Sec.****PROCURATION**

Agent signing by, effect, negotiable instruments	28-122
--	--------

**PROCURER**

See PANDERING

**PRODUCERS MARKET**

Farmers produce market	10-136, 10-137
Location, charges for space	10-136

**PROFERT**

Lack in pleadings	13-206
-------------------	--------

**PROFESSIONAL BONDSMEN**

See CRIMINAL PROCEDURE

**PROHIBITION**

District Court empowered to issue	11-315
Writ of, District Court authorized to issue	11-315

**PROJECTILES**

Regulations relative to, power to adopt	1-227
---	-------

**PROMISSORY NOTES**

See NEGOTIABLE INSTRUMENTS

Definition	28-1001
Interest rate	28-2702
Negotiable instruments referee in case of need, bills of exchange	28-906
Nonnegotiable, assignment	28-2503
Presentation for payment by notaries public	1-509
Protest by notaries public	1-509

**PROOF**

See EVIDENCE

Divorce decree, requirements	16-419
Ejectment	16-505
Will for probate	19-305

**PROPERTY**

See BUILDINGS; LOST PROPERTY; PERSONAL PROPERTY; PUBLIC BUILDINGS AND WORKS; REAL PROPERTY; STOLEN PROPERTY; TRESPASS; UNSAFE STRUCTURES; ZONING REGULATIONS

Claims to attached property	16-318
Conditional sale, removing property subject to, penalty	22-1406
Damage, limitation of actions	12-201
Detention, limitation of actions	12-201
District, injuring, penalty	22-3111
Electric company, tampering with, penalty	22-3115
Injuries to, criminal offenses	22-3101—22-3122
Mortgaged, removing from District, penalty	22-1209
Orders and decrees in equity for delivery, enforcement	11-328
Preceding corporations, property vested in District	1-104
Preservation of attached property	16-314
Property on which fieri facias may be levied	15-210
Property rights	
Effect of annulment of marriage	16-409
Effect of divorce	16-409
Recovering specific personalty by attachment	16-301
Recovery, limitation of actions	12-201
Search warrants, property subject to	23-301—23-304

**Sec.**



**PROPERTY—Continued**

Sec.

Stolen	
Destroying, penalty	22-2208
Receiving, penalty	22-2205
District, property of, penalty	22-2207
Subject to attachment and garnishment	16-308
Taking and carrying away another's property	22-1211
Trespass to, criminal offenses	22-3101—22-3122
United States, injuring, penalty	22-3111
Unlawful entry on private, penalty	22-3102
Vandalism, penalty	22-3112

**PROPERTY CLERK**

Accused acquitted, return of property	4-157
Custody of stolen, lost, or abandoned property	4-152
Record kept, contents	4-153
Delivery of property to owner pending trial	4-163—4-165
Animals or other property	4-163
Bond required	4-163
Commissioners' power to authorize	4-163
Large quantities of goods held for sale by owner, amount retained by clerk	4-165
Money excepted	4-163
Perishable property, bond	4-164
Depositions, power to certify	4-155
Oaths, power to administer	4-155
Office created	4-151
Pawnbrokers, property taken from	4-159
Perishable property, sale or delivery to owner	4-162, 4-164
Property coming into possession of police delivered to clerk	4-159
Property of decedent coming into possession of clerk	4-159
Property exceeding \$100 in value	4-159
Property not exceeding \$100 in value	4-159
Unclaimed balances credited to Police and Firemen's Relief Fund	4-159
Property uncalled for within year deemed abandoned	4-167
Record of property turned over by police	4-159
Return of property on proof of ownership	4-156
Sales at auction	4-160, 4-161
Motor vehicles unclaimed for three months	4-160
Property unclaimed within six months	4-160
Publication of notice	4-160
Unclaimed animals, notice	4-161
Unclaimed balances paid into policemen's fund	4-160
Third-party claimants, custody of property pending acquittal or conviction of accused	4-158
Use of property as evidence in trial of cause	4-166
Vested with powers of notary public	4-154
<b>PROPERTY CUSTODIAN</b>	
Contents of reports	1-309
Property consumed in use, statement concerning	1-309
Reports and returns to Commissioners of District	1-309
<b>PROPERTY YARD</b>	
Reservation, 185	8-126

**PROSECUTIONS**

Sec.

See CRIMINAL PROCEDURE	
Criminal offenses	22-109
Informations in Police Court	11-616

**PROSTHETIC DENTISTRY**

See DENTISTRY	
Dentist, examination for license	2-308

**PROSTITUTION**

See ASSIGNATION; HOUSES OF PROSTITUTION; LEWDNESS; NUISANCES; PANDERING	
Federal white slave law, reference	p. 680
Females under 16	22-2704
Abduction or enticement	22-2704
Harboring	22-2704
House of	4-145, 4-146, 11-604, 22-2701—22-2722
Inviting	22-2701
Pandering	22-2705—22-2712
Penalty	22-2701
Suspension of sentence	22-2703
Premises occupied for, nuisance	22-2713—22-2722
Vagrancy	22-2702
Frequentee deemed	22-2702
Inmate deemed	22-2702
Suspension of sentence	22-2703
Wife, causing to practice	22-2708

**PROTEST**

See NEGOTIABLE INSTRUMENTS	
Bills and notes by notary, fee	1-514
Certified copy, notaries record, evidence	1-513
Dishonored negotiable instrument	28-730
Foreign bills of exchange by notary	1-508
Inland bills of exchange by notary	1-509
Failure to comply with law, penalty	1-509
Form and content	1-509
Notice of protest, fee	1-514
Street assessment by agreed party	7-631
Adjustment of assessment by Commissioners	7-631
Time limit	7-631

**PROVIDENCE HOSPITAL**

See HOSPITALS AND ASYLUMS

**PSYCHIATRISTS**

Examining children in Juvenile Court	11-926
--------------------------------------	--------

**PSYCHOLOGISTS**

Examining children in Juvenile Court	11-926
--------------------------------------	--------

**PUBLIC ACCOUNTANT**

See ACCOUNTANTS	
Definition	2-902

**PUBLICATION**

See PROCESS	
Beverage bottle registrations	48-101
Corporations, annual report	29-213
Delinquent tax list, advertisement	47-1001
District budget estimates	47-212
Insurance companies' annual reports	35-103
Land levied upon for personal taxes, notice of sale	47-1301
Label, sufficiency of	22-2302
Milk-beverage container registration	48-302
Milk container registrations	48-201



**PUBLICATION—Continued**

Order to appear in enforcement of real property tax liens	47-1012
Regulations adopted by Commissioners	1-225
Regulations issued under Boiler Inspection Act	1-718
Rules and regulations for protection of milk, cream and ice cream supply	33-307
Special charter application	29-102
Standards of classification for employers under unemployment compensation	46-303
Terms of limited partnership agreements	41-110
Traffic regulations	40-603
Zoning regulations	5-421

**PUBLICATION OF NOTICE**

See NOTICES; PROCESS

Absentees' and absconders' estates	20-704
Affidavit of absence as prerequisite	13-109
Affidavit of mailing copy	13-111
Alley dwellings, intention to demolish, remove, or have vacated	5-108
Attachment and garnishment	16-302
Barbed-wire fences, removal	7-1105
Bill of revivor	12-116
Certified Public Accountant examination	2-905
Charter alteration, notice of intent	29-102
Charter extension, notice of intent	29-102
Chattels distrained for taxes, notice of sale	47-1301
Citation and notice, eminent domain proceedings	16-623
Closing and readjusting streets and highways	7-402
Publication and serving of order	7-404
Corporations, serving process on	13-104
Deceased indigent, intentions to deliver body to medical school or board	2-203
Dental board, rules and regulations, publication	2-331
Divorce suits	13-108
Eminent domain proceedings	
Alleys and minor streets, opening, widening, or straightening	7-314, 7-315
Assessment of land no part of which taken	7-221
Land for streets	7-204
Fire escapes and safety provisions, requiring construction, service of notice	5-310
Form	13-110
Healing arts, examination of applicants for license	2-114
Insanitary buildings, proceedings for condemnation	5-610
Juvenile Court	11-910
Notice before enforcement of liens for unpaid real property taxes	47-1012
Notice of annual meeting of board of equalization and review	47-708
Notice of assessment for service sewer	43-1512
Notice of assessment for water main	43-1512
Notice of levy of special assessments	47-1103
Notice of publication of delinquent tax list	47-1001
Notice of sale of unclaimed freight	44-101
Notice of sale to enforce lien for real property tax	47-1013

**PUBLICATION OF NOTICE—Continued**

Notice of sessions of board of personal tax appeals	47-1213
Duty to equalize values	47-1213
Paving or completely resurfacing street	7-612
Podiatry and Board of Examiners, rules and regulations, adoption	2-719
Prerequisites	
Affidavit of absence	13-109
Return of summons "not found"	13-109
Printers' rates	1-809
Process	13-108, 13-113
Property clerk, auction sales	4-160, 4-161
Public contractor's bonds, notice to creditors	1-804
Quieting title obtained by adverse possession	16-1501
Quo warranto proceedings	16-1605
Real property tax sales, notice	47-1001
Replevin, publication to defendant absent when goods are seized	16-1806
Replevin suits, Municipal Court	11-727
Return of summons as prerequisite	13-109
Service of process on absentee and nonresident parties	13-108
Service of process on insane persons	13-112
Sewer and water main connections, notice requiring, nonresident owners	6-404
Street and other public improvement assessment under permit system	7-608
Street and sewer improvements, advertising for bids	7-601
Unsafe structures and excavations, abatement	5-505
Zoning regulations, amendment, notice of hearing	5-415

**PUBLIC AUCTIONS**

See AUCTIONEERS; AUCTIONS

Permits for public auctions	47-2201—47-2208
Sales under authority of law, exemption from permit law	47-2201

**PUBLIC BATH ESTABLISHMENTS**

License	47-2312
---------	---------

**PUBLIC BUILDINGS AND WORKS**

See BUILDINGS; CAPITOL GROUNDS; PUBLIC IMPROVEMENTS

Adjacent parking zones at public buildings for members of Congress	40-604
Advertisement for bids	1-808, 1-809
Affidavit of contractor as to completion of work and payment of claim	1-804
Bond of contractor	
Actions on bond, interveners	1-804
Actions on bond, time limit	1-804
Amount of bond	1-804
Claims for labor or materials	1-804
Notice of suit on, publication and of right to intervene	1-804
Persons entitled to sue on bond	1-804
Purchase of supplies and materials, cost not in excess of one thousand dollars	1-806
Terms and conditions of bonds	1-804
Waiver, work or material not in excess of \$1,000	1-805, 1-806



PUBLIC BUILDINGS AND WORKS—Con.		Sec.	PUBLIC BUILDINGS AND WORKS—Con.		Sec.
Borrowing power for construction of building, limited		9-212	Juvenile Court, building, construction, public works loan		9-204, 9-208
Building for Recorder of Deeds, loan for construction		9-215—9-218	Lease of lands pending need for use		8-105
Amount of loan		9-215	Limitation of hours of laborers and mechanics		22-3407, 22-3408
Annual report of Commissioners to Congress		9-218	Penalty		22-3408
Interest on loan		9-217	Loans to District for construction of buildings		9-212—9-214
Purposes for which funds used		9-215	Amendment of existing contracts and agreements authorized		9-213
PWA loan authorized		9-215	Interest on loan		9-213
Repayment of loan, period of amortization		9-217	Interest rate determined by Secretary of Treasury		9-214
Building or street materials, injuries to, penalty		22-3113	Issuance of evidences of indebtedness issues authorized		9-213
Capitol grounds, protection of buildings and property		9-105—9-117	Limitation on borrowing power		9-212
Construction of buildings		9-204—9-207	Police protection		4-120
Advancement of funds by government		9-208	Retention of percentage of final payment		1-807
Amount of reimbursement in any one year		9-206	Deposit with treasurer of United States		1-807
Anticipation of revenues by District		9-206	Interest, sum in excess of \$100		1-807
Interest on funds borrowed from government		9-206	Investment, discretion of treasurer		1-807
Reimbursement of Federal Treasury		9-206	Length of time for which held		1-807
Report of Commissioners to Congress		9-207	Purposes for which retained		1-807
Tax levy for repayment of loan		9-207	Sale of land by Commissioners of District		9-301—9-303
Contract for construction		1-804	Sale of land by Secretary of Interior		9-304—9-306
Bond of contractor		1-804	School buildings, use		31-801—31-809
Formal contract not required, amount involved less than one thousand dollars		1-806	Separate contracts for materials and for labor		1-810
Contractor's bond, insufficient to satisfy claims and demands, pro rata distribution among intervenor		1-804	Sites for schools and other buildings		1-812
Court of Appeals building, Clerk of Court custodian		11-211	Use of agents in purchasing		1-812
District property, injuring, penalty		22-3111	Snow and ice, removal from sidewalk		7-802, 7-803
Eight-Hour Law, laborers and mechanics		22-3407, 22-3408	Splitting of contract to avoid giving bond prohibited		1-805
Penalty		22-3408	Streets to be improved, arrangement of schedule by Commissioners		7-607
Electric light and power plants, construction, restriction		9-203	Tearing up streets, failure to restore, penalty		7-1208
Federal buildings		5-428	Testing of building materials		1-813, 1-814
Exception from Zoning Regulatory Law		5-428	Bureau of Standards		1-813
Plans, approval by National Capitol Park and Planning Commission		5-428	Utilization of laboratory of Highway Department		1-814
Judiciary Square, federal loan for construction of building		9-204, 9-208	Wages of laborers and mechanics		1-815
Acquisition of land by purchaser condemnation		9-209	Determination of prevailing wage		1-815
Amount of loan		9-204, 9-208	National emergency, suspension of prevailing wage rate		1-815
Appurtenances, furnishings and equipment, installation		9-209	Prevailing wage rate paid		1-815
Commissioners authorized to accept advancement		9-208	Wharf property, control and regulation, leases and rent		9-101, 9-102
Contracts and agreements		9-209	PUBLIC CABS		
Location of buildings		9-208	As common carriers		43-111
Period of amortization of loan		9-204	Loitering		40-617
Preparation of plans, estimates, and model		9-209	Traffic regulations		40-617
Purposes for which funds used		9-209	PUBLIC CONTRACTS		
Repayment of loan, annual budget		9-210	See PUBLIC BUILDINGS AND WORKS; STREETS AND OTHER WAYS		
Report of Commissioners to Congress		9-211	Advertisement for bids		1-808, 1-809
Judiciary Square, heat furnished from Central Heating Plant		9-103	Immediate delivery not required		1-808
Connection with government main		9-103	Amount involved not in excess of \$100		1-808
Payment for heat		9-103	Appropriation condition precedent		1-808
			Authorization by law required		1-808
			Board of Public Welfare, members and employees, personal interest prohibited		3-113
			Bond of public contractor		1-804



**PUBLIC CONTRACTS—Continued**

	Sec.
Contractors becoming surety for District officers prohibited	1-210
Dependent children, contracts for care of	3-115
Emergency purchases	1-808
Garbage, collection and disposal	6-502
Jury service by contractors	11-1420
Prevailing wage rate, payment	1-815
Readvertisement, bids rejected	1-808
Recording and signing by Commissioners	7-602
Separate contracts for materials and for labor	1-810
Sewers of District, use by Maryland	1-817
Street improvements	
Advertising for bids	7-601
Exceeding appropriations prohibited	7-620
Maximum duration, subject to appropriations by Congress	7-621

**PUBLIC CONVENIENCE STATIONS**

See COMFORT STATIONS

**PUBLIC CREMATORY**

See CEMETERIES AND CREMATORIES

**PUBLIC FUNDS**

"Conversion of inhabited alleys fund" defined 5-105

**PUBLIC GROUNDS**

See PARKS AND PLAYGROUNDS; PUBLIC BUILDINGS AND WORKS; RESERVATIONS

Buildings, construction, authorization by Congress required	8-133
Philadelphia, Baltimore and Washington Railroad Company, extension of tracks	7-1219
Rules and regulations for government and care, power to adopt	8-143
Sidewalks, rules and regulations concerning, power to adopt	8-144
Use as playground	8-128

**PUBLIC HACKS**

Drivers, license	47-2331
Licenses	47-2331
Loitering	40-617
Stands	47-2331
Traffic regulations	40-617

**PUBLIC IMPROVEMENTS**

See PUBLIC BUILDINGS AND WORKS; STREETS AND OTHER WAYS

Contractor's bond	7-603
Letting of contracts	
Advertising for bids	7-601
Unanimous consent of Commissioners	7-602
Liability of contractor for inferior work and repairs	7-603
Street improvements, assessment of cost	7-622—7-633
Streets and other ways	
Front foot rule of assessment	7-611, 7-612
Permit system of improvement	7-608, 7-609

**PUBLIC LANDS**

See EMINENT DOMAIN; REAL PROPERTY

**PUBLIC LIBRARIES**

Acceptance of gifts	37-101
Advancement of funds for monthly purchases	37-110
Authority of Commissioners of the District	37-101

**PUBLIC LIBRARIES—Continued**

	Sec.
Board of trustees	37-104
Annual report on management	37-105
Appointing librarian	37-105
Appointment	37-104
Duties	37-104, 37-105
Fines, fixing and collecting	37-105
Providing for care and preservation of books	37-105
Purchase of books, magazines, newspapers	37-104
Regulations	37-104
Tenure	37-104
Branch libraries	37-102
Agreements with Board of Education for	37-102
In school buildings	37-102
In separate buildings	37-102
Renting space for	37-102
Takoma Park branch	37-107, 37-108
Hours to be open	37-107
Limit on appropriations for	37-108
Buildings exempted from taxation	47-801
Central library and branches	37-101
Establishment	37-101
Librarian	37-105
Advances to by disbursing officer	47-118
Appointment	37-105
Appointment of assistants	37-105
Enforcing rules and regulations	37-105
Superintending libraries	37-105
Maintenance and building cost to be included in District estimates	37-106
Personal property exempted from taxation	47-1208
Persons entitled to use	37-103
Permanent residents	37-103
Residents of adjoining counties, fees	37-103
Temporary residents	37-103
Recovery of penalties	37-101
Supplement public educational system	37-101
Transfer of miscellaneous books to	37-109

**PUBLIC MARKETS**

See WEIGHTS, MEASURES, AND MARKETS

Stands for food and food products, license 47-2327

**PUBLIC OFFICERS**

See OFFICERS AND EMPLOYEES OF DISTRICT

**PUBLIC-OWNED VEHICLES**

Application of provision to District of Columbia	40-503
Fire and police motor vehicles not to be transferred to other departments	40-504
Uniform color, lettering	40-501
Vehicles for personal or official use, restrictions	40-502

**PUBLIC PARKS**

See PARKS AND PLAYGROUNDS

**PUBLIC PLAYGROUNDS**

Employees' salaries payable out of District revenues only	47-133
---	--------

**PUBLIC POLICY**

Alley dwellings, declaration of policy concerning	5-103
---	-------



<b>PUBLIC PRINTING</b>	Sec.	<b>PUBLIC UTILITIES—Continued</b>	Sec.
Notices, printing, rates	1-809	Application of provisions	43-122
Reports of Commissioners of District	1-238—1-240	Construed to be free from conflict with interstate commerce laws	43-122
<b>PUBLIC RECORDS</b>		Transportation of freight	43-122
Destroying, defacing, penalty	22-3107	Transportation of passengers	43-122
Open to public inspection without charge	45-705	Transportation of property	43-122
Surveyor's records	1-608	Assignment of franchise, approval of public utilities commission required	43-501
<b>PUBLIC SCHOOLS</b>		Authority of Commissioners of District to continue	43-209
See <b>EDUCATION</b>		Boards of directors	43-1004
<b>PUBLIC SCHOOL TEACHERS</b>		Number of directors limited	43-1004
See <b>EDUCATION</b> ; <b>TEACHERS</b>		Stockholders determining number of directors	43-1004
<b>PUBLIC SERVICE CORPORATION</b>		Boiler Inspection Act, exemption	1-709
Electric light and power companies, exemption from wiring inspection law	1-719	Bus lines	
<b>PUBLIC UTILITIES</b>		Competitive street car and bus lines	44-201
See <b>RAILROADS</b> ; <b>WATER DEPARTMENT</b>		Certificate of convenience and necessity	44-201
Accidents on premises, reporting	43-1001	Establishment	44-201
Accounts	43-309—43-316	"Commission" defined	43-101
Allocation of items	43-314	"Commissioner" defined	43-102
Books and records to remain in District	43-312	"Common carrier" defined	43-111
Construction account	43-316	Common carriers, employers' liability act	44-401—44-405
Contents	43-318	Complaints	43-408—43-410
Copy of verified balance sheet to be transmitted to Congress	43-313	Hearing	43-411
Depreciation account	43-315	Hearings to precede orders	43-408
Application of depreciation funds	43-315	Ordering reasonable rates after investigation and hearing	43-411
Rates of depreciation	43-315	Separate hearings	40-413
Examination and audit	43-314	Utility may make	43-417
Failure to keep, penalty	43-905	Utility to be notified	43-409
Keeping records in general office outside District	43-312	Conflict between ordinances and regulations and orders of public utilities commission	43-209
Public utilities commission to furnish blank forms	43-311	Congressional reservation of right to alter, amend or repeal public utilities laws	43-1007
Public utilities commission to prescribe forms	43-310	Consolidation, issuance of securities	43-805
Rendering to public utilities commission	43-309	Construction	43-316
Separate accounts for other business	43-309	"Corporation" defined	43-105
Sliding scale of rates and dividends	43-317	Corporations subject to provisions	43-123
To be closed annually	43-313	Business not yet transacted	43-123
Uniform accounts of all business transacted	43-309	Formed to acquire properties subject	43-123
Verified balance sheet to be filed with public utilities commission	43-313	Formed to transact business subject	43-123
Acts of prior commission validated	43-203	Franchises not yet exercised	43-123
Antimerger law	43-502	Possessing franchises subject	43-123
Appeals from orders of public utilities commission	43-705	Property not yet acquired	43-123
Appeals from District Court to Court of Appeals	43-705	Definitions	43-101—43-121
Certiorari to Supreme Court from Court of Appeals	43-705	Dissolution for violation of antimerger law	43-502
Decrees	43-705	Dividends, stock dividends prohibited	43-804
Pleadings	43-705	Each day's violation to be separate offense	43-910
Appliances for measuring utility products	43-321, 43-322	"Electrical corporation" defined	43-115
Entry on premises of utility to test	43-322	Electric companies, additional lines on or over streets prohibited	43-1401
Equipment for tests	43-322	Electric corporations	43-601—43-606
Right of consumer to have test	43-321	Electric meters, inspection	43-603
Testing fees	43-321	Electric meters, uninspected, use forbidden	43-603
Consumer to pay	43-321	Electric plants, permission and approval required before construction	43-602
Utility to refund when	43-321	General powers of public utilities commission	43-601
		Meter, inspection, providing place and apparatus	43-603



PUBLIC UTILITIES—Continued		Sec.	PUBLIC UTILITIES—Continued		Sec.
Electric corporations—Continued			Gas corporations		43-601—43-606
Suit to collect charges, excessive rate as defense		43-604	Gas meters, inspection		43-603
Electric light and power companies		43-1101—43-1109	Gas meters, uninspected, use forbidden		43-603
Additional lines on or over streets prohibited		43-1401	Gas plant, permission and approval required before construction		43-602
Annual reports to Congress, contents		43-1109	General powers of Public Utilities Commission		43-601
Certain conduits and overhead wires legalized		43-1103	Meter inspection, providing place and apparatus		43-603
Conduits and overhead wires prohibited		43-1102	Suit to collect charges, excessive rate as defense		43-604
Ducts for fire and police wires		43-1107	"Gas plant" defined		43-112
Extension of conduits		43-1107	Immunity of witnesses		43-712
Extension of overhead wires in Georgetown		43-1101	Investigations, utility to bear cost		40-412
Extension of underground conduits in Mount Pleasant		43-1101	Issuance of securities		43-801, 43-808
House connections authorized		43-1102	Application of proceeds of sale		43-806
Joint use of certain conduits		43-1108	Certificate of authority required		43-802
Overhead electric lighting wires east of Rock Creek		43-1104	False statements in securing approval, penalty		43-901
Penalty for failure to pay bills on time		43-1107	For reorganization or consolidation		43-805
Permits for repair, extension and enlargement of conduits		43-1106	Approval of Public Utilities Commission required		43-805
Price for current		43-1107	Approval of terms of consolidation required		43-805
Reservation of ducts for United States and District		43-1106	Issuance contrary to law, penalty		43-808
Special acts relating to		43-1101—43-1109	Issuing with knowledge of fraud in obtaining approval, penalty		43-901
Electric light companies, excise tax		47-1701	Misapplication of proceeds, penalty		43-808
"Electric plant" defined		43-114	Receiving money for before recording certificate of authority		43-803
Electric power and light companies		43-1101—43-1109	Recording certificate of authority		43-803
Excise tax		47-1701	Securities void if issued contrary to law		43-807
Existing laws remain in force except when inconsistent or repugnant		43-1005	Stock dividends prohibited		48-804
"Extension or extensions" defined		43-108	Joint board		40-603, 43-908
Failure or refusal to perform lawful duty, penalty		43-910	Joint board's rules, orders, regulations		43-907
Failure or reprisal to obey public utilities commission, penalty		43-906	Penalty for violating		43-907
Failure to furnish information required, penalty		43-905	Prosecutions		43-907
False information, furnishing, penalty		43-905	"Joint rates" defined		43-107
Fines, penalties and forfeitures, payment to treasury		43-912	Liberal construction of public utilities laws required		43-1003
Furnishing data required by Public Utilities Commission		43-407	Light and power companies		43-1101—43-1109
Gas and electric corporations		43-601—43-606	Lighting of streets		7-701—7-710
General powers of Public Utilities Commission		43-601	Litigation, utility to bear cost		40-412
Gas companies			Motor vehicles for hire, employers' liability act		44-401—44-405
Additional charge for nonpayment of bills		43-1207	Office to be maintained in District		43-312
Additional laboratories for gas testing		43-1202	Orders of Public Utilities Commission		
Annual report to Congress, contents		43-1206	Alteration, modification, amendment after appeal is filed, effect		43-709
Excise tax		47-1701	Appeals limited to questions of law		43-706
Hours of daily inspections		43-1204	Appeals to District Court		43-705
Inspection of meters, fees payable into Treasury		47-127	Certification of question to Court of Appeals		43-708
Laboratory for testing gas		43-1201	Precedence over other civil matters		43-705
Maximum rates for gas		43-1207	Procedure		43-705
Removal of gas meters for failure to pay for service		43-1205	Taxation of costs		43-705
Representation at testing of gas		43-1203	Application for reconsideration		43-704
Special acts relating to		43-1201—43-1207	Certified copies to be furnished		43-713
"Gas corporation" defined		43-113	Each day's violation to be separate offense		43-910
			Effect of reconsideration		43-704
			Exclusive method of review		43-704—43-710
			Failure or refusal to obey, penalty		43-906
			Findings of fact conclusive on appeal, exception		43-706



PUBLIC UTILITIES—Continued		Sec.	PUBLIC UTILITIES—Continued		Sec.
Orders of Public Utilities Commission—Con.			Public Utilities Commission—Continued		
Prosecutions for violation		43-907	Approval of consolidations prior to issuance of securities		43-805
Recession after appeal is filed, effect		43-709	Attendance of witnesses		43-405
Recession, alteration, amendment		43-702	Bus lines, approving licenses		47-2331
Reconsideration		43-704	Chairman, election of		43-201
Remain in force pending appeal		43-706	Compelling compliance with laws and ordinances		43-303
Right to appeal		43-705	Compensation of employees		43-206
Saving clause		43-711	Competitive street car and bus lines, certificates of convenience and necessity		44-201
Schedules to conform with		43-701	Complaints, hearing to precede order		43-408
Suspension by District Court		43-706	Corporation counsel to be general counsel		43-204
Valuation orders, appeal		43-705	Deposit for costs of investigations		40-412
Passenger motor vehicles for hire		44-301	Depositions		43-420
Blanket bond in lieu of insurance		44-301	Destroying apparatus or appliances of		43-909
Insurance required		44-301	Discriminatory rates, power to regulate		43-911
Operations on regular routes exempt from insurance requirement		44-301	Disobedience of subpoenas, procedure		43-405
Sinking fund in lieu of insurance		44-301	Duties of corporation counsel		43-204
Violation of insurance requirements, penalty		44-301	Each day's violation to be separate offense		43-910
Penalties and forfeitures are cumulative		43-913	Electric corporations, general powers		43-601
"Person" defined		43-106	Employees		43-206
"Pipe-line company" defined		43-120	Employment of additional attorneys		43-204
Power and light companies	43-1101—43-1109		Entry on premises of utility to test measuring appliances		43-322
Private conduits	43-1301—43-1304		Examination and audit of utility accounts		43-314
Conditions for laying		43-1301	Examination and test of measuring appliances		43-321
Congressional reservation of right to alter, amend or repeal provisions		43-1303	Expenditures		43-206
Construction of tunnels and structures in Anacostia River		43-1304	Expenses		43-206
Permission to lay		43-1301	Failure or refusal to obey, penalty		43-906
Refusal to remove unlawful conduits, penalty		43-1302	Failure to follow its directions in accounting, penalty		43-905
Production of incriminating evidence compellable		43-712	Failure to furnish information required by, penalty		43-905
Proposed changes in law to be submitted to public service commission		43-304	False information to, penalty		43-905
Public Service Commission			Fines, penalties and forfeitures, payment to treasury		43-912
Conflicts with authority of Commissioners of the District		43-209	Fixing standards of utility products		43-320
Filing valuation statement with utility concerned		43-307	Fixing unreasonable or discriminatory rates		43-911
Hearing on valuation		43-307	Franchise assignments must be approved by		43-501
Investigation of inadequate services		43-408	Furnishing blank forms to utilities		43-311
Keeping informed on conduct of utility business		43-403	Gas corporations, general powers		43-601
Street railways, enforcing service requirements		44-202	Gas meters, inspection		43-603
Valuation statement to be filed with District Committee in Congress		43-307	Hearings on complaints		43-410
Value of properties at time of evaluation		43-306	Hearings on proposed changes in law		43-304
Public Utilities Commission	43-201—43-209		Immunity for judgment for damages		43-705
Accidents on utility's premises		43-1001	Immunity of employees for judgment for damages		43-705
Investigation may be made		43-1001	Implied and incidental powers granted		43-1003
Reports to be made		43-1001	Inquiries by one Commissioner		43-202
Additional compensation of corporation counsel		43-204	Inspection of electric meters		43-603
Adopting rules and regulations		43-402	Appointment of inspectors		43-603
Alternative methods of enforcement		43-908	Duties of inspectors		43-603
Annual report		43-319	Consumer complaints		43-603
Contents		43-319	Costs of inspection		43-603
Valuation data to be included		43-305	Premises and apparatus for inspection		43-603
Apparatus or appliances, destruction, penalty		43-909			



PUBLIC UTILITIES—Continued		Sec.	PUBLIC UTILITIES—Continued		Sec.
Public Utilities Commission—Continued			Public Utilities Commission—Continued		
Inspection of electric meters—Continued			Orders—Continued		
Rules and regulations	43-603		Prosecutions for violations	43-907	
Use of uninspected meters forbidden	43-603		Recession, alteration, amendment	43-702	
Inspection of gas meters	43-603		Reconsideration	43-704	
Appointment of inspectors	43-603, 43-605		Orders regarding rates	43-701	
Consumer complaints	43-603		Effect	43-701	
Costs of inspection	43-603		Recession, alteration, amendment	43-702	
Duties of inspectors	43-603		Orders superior to municipal ordinances	43-209	
Premises and apparatus for inspection	43-603		Passenger motor vehicles for hire, requiring insurance	44-301	
Removal of inspector	43-605		People's counsel	43-205	
Rules and regulations	43-603		Appointment by President	43-205	
Transfer of old inspection records	43-606		Duties	43-205	
Use of uninspected meters forbidden	43-603		Qualifications	43-205	
Instructions on evaluation, application to District Court for	43-704		Salary	43-205	
Investigating agents	43-406		Power over creating liens on corporate properties	43-801	
Appointment	43-406		Power to enforce public utilities law	43-1002	
Divulging information learned in investigation, penalty	43-601		Prescribing forms of books, records, accounts	43-310	
Duties	43-406		Proceedings to punish contempt of	43-418	
Powers	43-406		Production of utility's records	43-405	
Power to administer oaths	43-418		Compellable by summons	43-405	
Investigation of discriminatory rates	43-408		Penalty for refusal to comply with subpoena	43-405	
Investigation of unjust rates	43-408		Proposed changes in law to be submitted	43-304	
Investigations by one Commissioner	43-202		Prosecutions for violation of rules, orders, regulations	43-907	
Issuance of securities, power over	43-801		Purchase of competitors' securities must be approved by	45-501	
Issuing certificate of authority to issue securities	43-802		Quorum	43-202	
Issuing subpoenas	43-418		Rate changes	43-401	
Liability for costs in appeals	43-705		Rate schedules	43-323—43-330	
Liability for injury to utility	43-705		Rates, tolls and charges prima facie reasonable	43-703	
Limitation on cost of investigations	40-412		Reasonable rates may be ordered	43-411	
Mandamus by	43-204		Recommending proposed changes in law to Congress	43-304	
Material for testing measuring appliances	43-322		Record of proceedings	43-421	
Members	43-201		Revaluations	43-308	
Designated as public utilities commissioners	43-201		Right to examine utility's officers	43-404	
Engineer Commissioner	43-201		Right to inspect utility's books	43-404	
Oaths	43-201		Setting conditions and compensation for joint use of equipment	43-302	
Qualifications	43-201		Special powers not to exclude other powers	43-1003	
Salaries	43-201		Summary investigations	40-414	
Terms	43-201		Grounds	40-414	
Two appointed by President	43-201		Hearing	40-415	
Neglect or violation of law by utilities, inquiries	43-1002		Procedure on hearing	40-416	
New construction by utilities	43-316		Taxicabs and hacks, power to regulate	47-2331	
Oaths, power to administer	43-418		Testimony to be taken stenographically	43-421	
Obtaining information for utilities	43-403		To notify utilities of complaints	43-409	
Ordering changes in utility services	43-208		To require insurance from taxicabs	44-301	
Ordering improvement of utility equipment	43-208		Transcript of testimony as evidence	43-422	
Ordering repairs by utilities	43-208		Unreasonable rates, power to regulate	43-911	
Ordering separate hearings on complaints	40-413		Utilities to furnish requested data	43-407	
Orders			Utility may make complaint	43-417	
Appeals to District Court	43-705		Utility to bear cost of proceedings	40-412	
Application for reconsideration	43-704		Valuation of public utilities	43-305	
Effect of reconsideration	43-704		Vested with powers withdrawn from Interstate Commerce Commission	43-207	
Failure or refusal to obey, penalty	43-906		Witness for	43-419	
Furnishing certified copies	43-713				
Not void where there is substantial compliance with legal provisions	43-1003				



## PUBLIC UTILITIES—Continued

Sec.

Public utilities corporation	
Electric plants, approving construction	43-602
Gas plants, approving construction	43-602
"Public utility" defined	43-103
Purchase of competitor's securities, approval of public utilities commission required	43-501
Railroads	
Philadelphia, Baltimore and Washington R. R. Co.	44-104-44-107
Sale of unclaimed freight	44-101-44-103
Rates and dividends	43-317
Approval of public utilities commission	43-317
Sliding scale permitted	43-317
Rates, tolls and charges	43-323-43-330
Appeals from rulings to District Court	43-401
Application for advance or discontinuance	43-401
Change after order to be approved by public utilities commission	43-701
Change in schedule, notice	43-327
Consumer furnishing equipment not to have rates reduced	43-903
Discriminatory rates, investigation	43-408
Existing rates continued	43-401
Existing rates to remain until set aside	43-323
Hearing on application for change	43-401
New schedules to be filed in stations, offices	43-328
Not to be reduced because consumer furnishes equipment	43-903
Orders on complaints, hearing required	43-408
Prima facie reasonable when fixed by public utilities commission	43-703
Rates in excess of printed schedules declared unlawful	43-329
Rebates, penalty	43-904
Replacing discriminatory rates	43-411
Replacing unjust rates	43-411
Rules and regulations to be filed	43-324
Schedule, change in form	43-330
Schedule of joint rates to be filed	43-326
Schedules to be filed in stations and offices	43-325
Schedule to be filed with public utilities commission	43-323
Schedule to conform to orders of public utilities commission	43-701
Separate hearing on complaints	40-413
Unjust discrimination, penalties	43-902
Unjust rates, investigation	43-408
Reorganization, issuance of securities	43-805
Required to obey lawful orders of public utilities commission	43-301
Sale and merger	43-501-43-503
Acquisition of stock or bonds of competitor	43-501
Antimerger law	43-502
Assignment of franchise	43-501
Dissolution for violation of antimerger law	43-502
Express authority of Congress required	43-502
Foreign corporations to dispose of securities held in violation of antimerger law	43-502
Foreign holding company not to buy	43-502

## PUBLIC UTILITIES—Continued

Sec.

Sale and merger—Continued	
Foreign public utility corporation not to buy	43-502
Holding companies to dispose of securities held in violation of antimerger law	43-502
Issuance of securities for consolidation	43-805
Issuance of securities for reorganization	43-805
Local holding company not to buy	43-502
Not to buy other companies	43-502
Public utilities commission	43-501
Franchise assignments invalid without approval	43-501
Purchase of competitor's securities invalid without approval	43-501
Street car mergers exempt from antimerger law	43-502
Street railways	43-503
Joint resolution of Congress required	43-503
Permission to merge	43-503
Unauthorized sale void	43-502
Saving clause	43-913
Saving clause on constitutionality	43-1003
Saving clause on prosecutions and proceedings	43-1006
Schedule of rates	43-323-43-330
Sections separable in case of unconstitutionality	43-1003
Service and facilities	43-301
Charges to be reasonable, just, nondiscriminatory	43-301
Safe and adequate service required	43-301
"Service" defined	43-104
Standards	43-320
Fixing by public utilities commission	43-320
Measurement of utility products	43-320
Meters	43-320
Quality of utility products	43-320
Regulations for testing products	43-320
Street lighting, schedule of charges	7-701
"Street railroad corporation" defined	43-110
"Street railroad" defined	43-109
Street railways	
Annual report to Congress, contents	44-215
Competitive street car and bus lines	44-201
Certificate of convenience and necessity	44-201
Establishment	44-201
Congressional approval of mergers required	43-503
Duct lines, construction authorized	44-206
Excise tax	47-1701
Failure to supply glass vestibules for motormen, penalty	44-205
Fenders required on street cars	44-204
Free transportation of policemen and firemen	44-213
Glass vestibules required for motormen	44-205
Joint use of underground tracks permitted only where motive power is identical	44-210
Merger	43-503
Power, equipment, appliance and service requirements	44-202
Public Utilities Commission power on services	44-202



**PUBLIC UTILITIES—Continued**

Sec.

**Street railways—Continued**

Rails, type required specified	44-209
Reciprocal trackage agreements required	44-208
Reduced fares for school children	44-214
Removal of disused tracks	44-211
Commissioners of District may order	44-211
Failure to remove, penalty	44-211
Rules and regulations on services	44-202
Service requirements, prosecution of violations	44-203
Sufficient cars to be provided	44-202
Transfers	44-207
Free transfers when joint use of tracks is denied	44-212
Issuance	44-207
Misuse, penalty	44-207
Prosecutions for misuse	44-203
Reciprocal agreements required	44-208
Underground tracks, reciprocal trackage agreements permitted only where motive power is identical	44-210
Violation of service requirements, penalty	44-202
Summary investigation	40-414
Tax appeal board's rules, orders, regulations	43-907
Penalty for violation	43-907
Prosecutions	43-907
Taxicabs	44-301

**Telegraph companies**

Additional lines on or over streets prohibited	43-1401
Conditions for construction of conduits	43-1410
Conduits in public parks or reservations	43-1413
Conduits replacing poles and wires	43-1409
Congressional reservation of right to alter, amend or repeal stated provisions	43-1416
Ducts for telegraph, fire alarm and police patrol wires of government	43-1414
Erection and maintenance of poles in alleys	43-1412
Extension of conduits	43-1409
Failure to remove certain poles and wires, penalty	43-1411
Plans for new conduits	43-1410
Purchase or condemnation by government, rights for conduits not to be paid for	43-1417
Regulations for inspection of lines	43-1414
Removal of poles and wires	43-1409
Repair and renewal of conduits	43-1415
"Telephone corporation" defined	43-119

**Telephone companies**

Additional lines on or over streets prohibited	43-1401
Congressional reservation of right to alter, amend or repeal certain provisions	43-1408
Construction of conduits, conditions	43-1403
Ducts for fire-alarm or police-patrol wires	43-1407
Erection and maintenance of poles in alleys	43-1405
Excise tax	47-1701
Extension of conduits	43-1402
Regulations for inspections of lines and conduits	43-1406

**PUBLIC UTILITIES—Continued**

Sec.

**Telephone companies—Continued**

Removal of overhead wires, penalty for failure	43-1404
Removal of poles and wires in certain area	43-1402
"Telephone corporation" defined	43-117
"Telephone line" defined	43-118
To report accidents on premises	43-1001
"Unjust discrimination" defined	43-902
Use of other companies' equipment	43-302
Application to public utilities commission in disagreements	43-302
Public utilities commission to set conditions and compensation in disagreements	43-302
Right to use for reasonable compensation	43-302
Valuation	43-305
By public utilities commission	43-305
Cost of construction	43-305
Hearing, notice and procedure	43-307
Outstanding stock	43-305
Publication in annual report of public utilities commission	43-305
Public utilities commission may apply to District Court for instructions	43-704
Replacement value	43-305
Revaluation	43-308
Utility to bear cost	40-412
Valued at time of evaluation	43-306
Violating public utilities law, general penalty	43-910
Water department	43-1501—43-1538
Assessments for service sewers	43-1511
Assessments for water mains	43-1511
Chief of Engineers shutting off water to prevent waste	43-1507
Chief of Engineers to report unlawful tapping of water pipes to District Attorney	43-1535
Damage or defacement of water pipes, penalty	43-1536
District Commissioners, power to erect fire plugs and hydrants	43-1501
Diversion of water beyond District	43-1529—43-1531
Acquisition of land and right-of-way for pipe lines to Virginia	43-1532
Contracts with Arlington County Sanitary District for diverting to Virginia	43-1531
Contracts with Washington Suburban Sanitary District for diverting to Maryland	43-1530
Prohibition, exceptions	43-1529
Erection of water mains and service sewers	43-1510
Expenses to be included in budget estimates	47-210
Fire-plug tax	43-1525—43-1528
Levy on buildings without water service	43-1525
Levy on discontinuance of water service	43-1528
Rates	43-1526
To cease on introduction of water	43-1527



**PUBLIC UTILITIES—Continued****Water department—Continued**

Fiscal year	43-1504
Large quantity users to erect and maintain meters	43-1509
Power of District Commissioners to lay water mains and pipes	43-1501
Prevention of water waste	43-1507
"Service sewer" defined	43-1517
Service sewers, erection	43-1510
Assessment collections to be credited to appropriations	43-1516
Assessment of abutting property	43-1510, 43-1511
Assessments payable in three installments	43-1513
Discretion of Commissioners of the District	43-1510
Notice of assessment	43-1512
Relevy of assessments	43-1515
Subject to control of Commissioners of the District	43-1502
Supplying water to charitable institutions and churches	43-1533
Unauthorized opening of water mains and pipes, penalty	43-1538
Under direction of engineer's office	43-1502
Unlawful tapping of water pipe, penalty	43-1534
Use of Potomac water for private mechanical and manufacturing purposes, or fountains	43-1508
Water mains, erection	43-1510
Assessment collections to be credited to appropriations	43-1516
Assessment of abutting property	43-1510, 43-1511
Assessments payable in three installments	43-1513
Discretion of Commissioners of the District	43-1510
District to pay for all but those supplying government property	43-1537
Notice of assessments	43-1512
Refund of overpaid assessments	43-1518
Relevy of assessments	43-1515
Water-main taxes to be uniform	43-1505
Water registrar	43-1506
Bond	43-1506
Duties	43-1506
Water rents	
Authority to collect in advance	43-1521
Authority to stop service on failure to pay	43-1521
Constitute fund for maintenance, management and repair of water supply system	43-1522, 43-1523
From Washington aqueduct to be applied to its improvement	43-1524
Not to be source of revenue	43-1522
Rates	43-1520
Refund when erroneously paid	43-1519
To be uniform	43-1505
Water supply, rules and regulations	43-1503
"Water-power company" defined	43-116

Sec.

**PUBLIC UTILITIES COMMISSION**

Sec.

See **PUBLIC UTILITIES****PUBLIC WAYS**See **STREETS AND OTHER WAYS****PUBLIC WELFARE**See **BOARD OF PUBLIC WELFARE****PUBLIC WORKS**See **PUBLIC BUILDINGS AND WORKS****PUMP**

Automatic measuring pump	10-122
"Out of use" sign, when required on pump	10-122
Subject to inspection and approval or condemnation	10-122

**PURCHASE-MONEY MORTGAGES**

When superior to judgment liens	15-108
---------------------------------	--------

**PURCHASER**

Intent to defraud	12-402
Purchaser with notice, fraudulent conveyances	12-402

**PURCHASING OFFICER**

Bond	1-304
Deputies	1-305
Duties	1-305
Giving of bonds, right to require	1-305
Purchasing officer responsible for acts	1-305
Supervision over purchase and distribution of supplies and materials	1-304
Under direction of Commissioners of District	1-304

**PYROXYLIN**

Storage license	47-2315
Approval of fire marshal	47-2315
Fee	47-2315

**QUALIFIED INDORSEMENT**See **NEGOTIABLE INSTRUMENTS****QUARRY**

Operation by District	1-811
Bids for operation	1-811
Duration of contract	1-811

**QUART**

Liquid quart, dimension	10-119
-------------------------	--------

**QUARTERS**

Juvenile Court	11-928
Municipal Court	11-701
Police Court	11-601

**QUEEN'S CHAPEL ROAD**

Closing in part authorized, consent of property-owners	7-123
--	-------

**QUIETING TITLE OBTAINED BY ADVERSE POSSESSION**

Bill to quiet title, content, sufficiency	16-1501
Decree	16-1501
Parties	16-1501
Process, service, publication	16-1501
Rights of those under legal disability, limitation	16-1501



**QUINTANA PLACE**

Abandonment in part authorized 7-123 note

**QUORUM**

Board for Condemnation of Insanitary Buildings 5-602  
 Board of Accountancy 2-903  
 Board of Cosmetology 2-1302  
 Board of Examiners and Registrars 2-1007  
 Board of Optometry 2-504  
 Board of Podiatry Examiners 2-702  
 Commissioners of District 1-211  
 Plumbing Board 2-1401

**QUO WARRANTO**

See COOPERATIVE ASSOCIATIONS

Corporations, dissolution 29-719—29-724  
 Default 16-1606  
 District Court empowered to issue writ 11-315  
 Institutions of learning 29-413  
 Notice to defendant 16-1605  
   Personal service 16-1605  
   Service by publication 16-1605  
 Parties 16-1601  
   Defendants 16-1601  
   Plaintiff 16-1601  
 Pleadings 13-320, 16-1607  
 Recovery of damages for ouster 16-1611  
 Refusal of Attorney General to institute 16-1603  
 Refusal of District Attorney to institute 16-1603  
 Relator claiming office to set forth facts 16-1604  
 To dissolve corporations 29-719—29-724  
 Trial by jury on request 16-1607  
 Usurpation of corporate franchise, injunction 16-1609  
 Usurpation of corporate office 16-1610  
 Usurpation of office, ouster 16-1608  
 Who may institute 16-1602  
   Attorney General 16-1602  
   District Attorney 16-1602  
   Relator 16-1602  
     Bond 16-1602  
     Leave of court required 16-1602  
     Petition to institute 16-1602

**RABBITS**

See GAME AND FISH LAWS

**RACES**

Betting, penalty 22-1508

**RAIDS**

Police making on complaint, character of places raided 4-145, 4-146

**RAILROADS**

See PUBLIC UTILITIES

Anacostia Bridge, cost of maintenance and repair, payment 7-505  
 Baltimore and Ohio Railroad Company 7-1212  
   Extension of tracks, authority conferred 7-1212  
   Grade crossing prohibited 7-1212  
   Grade crossings, construction prohibited 7-1212  
   Switches and sidings, construction authorized 7-1212  
 Terminal station  
   Authority to establish and maintain conferred 7-1212  
   Construction authorized 7-1212

**RAILROADS—Continued**

Baltimore and Potomac Railroad Company  
   Application by owner of lot for branch tracks or sidings 7-1211  
   Sidetracks and sidings, permission to lay 7-1210  
   Sidings and switches, power to construct 7-1210, 7-1211  
 Boiler Inspection Act, exemption 1-709  
 Cars, endangering passage of, penalty 22-3119  
 Chestnut Street Underpass, construction, division of cost 7-523  
 Electrification 7-1230—7-1234  
   Approval of plans and issuance of permit 7-1230  
   Cable and drawbridge opening 7-1230  
   Commissioners of District, jurisdiction not abridged 7-1233  
   Conduit systems, construction, permit 7-1232  
   Interstate Commerce Commission, jurisdiction not abridged 7-1233  
   Liability for personal injury 7-1234  
   Overhead and underground structures and equipment 7-1230  
   War Department jurisdiction not abridged 7-1233  
 Employers' liability act 44-401—44-405  
 Farragut Square, street fronting, railroads prohibited 7-1202  
 Federal laws applicable to District, reference p. 680  
 Francis Scott Key Bridge 7-511  
 Franklin Square, street fronting, railroad prohibited 7-1202  
 Locomotives, endangering passage of, penalty 22-3119  
 Long Bridge, use and maintenance 7-508  
 Michigan Avenue Viaduct, construction, payment of share of cost 7-520  
 Pennsylvania Avenue Bridge, maintenance and repair, apportionment of cost 7-504  
 Pennsylvania Railroad Company 7-1225—7-1229  
   Switches and sidings, construction authorized, restrictions, and conditions 7-1225—7-1229  
 Philadelphia, Baltimore and Washington Railroad Company  
   Abandonment of substation authorized 44-104  
   Branch tracks, spurs, or sidings, construction, restrictions and conditions 7-1218  
   Congressional reservation of right to amend, alter or repeal applicable provisions 44-107  
   Eminent domain proceedings, authority conferred 7-1221  
   Extension of tracks through public ground, restriction and condition 7-1219  
   Grade Crossing Act unaffected 7-1220  
   Navy Yard tracks  
     Acquisition and operation 7-1217  
     Sale or transfer to railroad company 7-1217  
   Paving between tracks, payment of cost 7-1222  
   Pennsylvania Railroad Company operating lessee 7-1225  
   Reversion of substation property to District 44-106



<b>RAILROADS—Continued</b>	<b>Sec.</b>	<b>REAL ESTATE AND BUSINESS BROKERS' LICENSING ACT—Continued</b>	<b>Sec.</b>
Philadelphia, Baltimore and Washington Railroad Company—Continued		Broker changing location of office, effect	45-1407
Switches, extensions, and turnouts, construction authorized	7-1216	Brokers required to have office in District	45-1407
Use of facilities by other carriers, compensation	7-1223	Brokers to display license	45-1407
Waiting room on platform authorized	44-105	Business-chance broker	
Rock Creek Bridge, use, cost of maintenance and repair, apportionment	7-503	Definition	45-1402
Sale of unclaimed freight	44-101—44-103	Requirements for real estate brokers made applicable	45-1402
At public auction	44-101	Business-chance salesman	
Conditions precedent to sale	44-101	Definition	45-1402
Disposition of proceeds	44-103	Requirements for real estate salesmen made applicable	45-1402
Notice of sale, publication	44-101	Contents of license	45-1407
Notice to take away	44-101	Definitions	45-1402
Perishable property	44-102	Enactment clause	45-1401
Order for sale in District Court	44-102	Exemptions and exceptions	45-1412
Order for sale in Municipal Court	44-102	Fees	45-1407
Scott Square, street fronting, railroad prohibited	7-1202	Broker's license	45-1407
Strangers and travelers at stations, protection by Commissioners	4-119	Payable to treasurer of Real Estate Commission	45-1403
Street lighting, payment for	7-709	Salesman's license	45-1407
Enforcing payment	7-709	To unlicensed persons prohibited	45-1414
Track elevation	7-1212, 7-1214, 7-1215	Fraudulent transfers and loans prohibited	45-1414
Union Station	7-1213	"Free lot scheme" prohibited	45-1414
Joint use by various railroads authorized	7-1213	Nonresident brokers and salesmen, provisions applicable	45-1410
Rates for use, establishment by United States District Court	7-1213	Penalties and prosecutions	45-1416
Viaducts, construction over	7-502	Persons exempted	45-1402
Lien of cost	7-502	Persons ineligible for license	45-1415
		Qualifications for license	45-1404
		"Real estate broker" defined	45-1402
<b>RAPE</b>		Real Estate Commission	45-1403
Definition, penalty	22-2801	Annual audit	45-1403
Killing while perpetrating, murder in the first degree	22-2401	Appointment and removal of members	45-1403
		Authority of Commissioners of District	45-1403
		Authority over licenses and licensees	45-1404, 45-1409
<b>RATES</b>		Authority to administer oaths	45-1414
Street lighting, schedule of charges	7-701	Compensation of members	45-1403
Taxicab and other public vehicles, power to determine	1-222, 1-223	Establishment	45-1403
		Expenses not to exceed receipts	45-1403
<b>RATIFICATIONS</b>		List of licensees to be published	45-1413
Children making new promise to pay, effect of Statute of Frauds	12-306	Membership	45-1403
		Officers	45-1403
<b>READJUSTMENT OF STREETS</b>		Power to obtain evidence	45-1411
See STREETS AND OTHER WAYS		Records	45-1403
Street Readjustment Act	7-401—7-410	Seal	45-1403
		Subpoenas by	45-1409
<b>REAL ESTATE AND BUSINESS BROKERS' LICENSING ACT</b>		Suspensions and revocations to be included in published list of licensees	45-1413
Acting without license prohibited	45-1401	"Real estate salesman" defined	45-1402
Application for license	45-1405	Recall of original license within six months	45-1407
Contents of broker's application	45-1405	Refusal to issue license, hearing	45-1406
Contents of salesman's application	45-1405	Regulations	45-1403
Bonds	45-1405	Reissuing licenses	45-1407
Brokers	45-1405	Renewal of license annually	45-1407
Conditions	45-1405	Return of salesmen's licenses at end of employment	45-1407
For renewal of license	45-1417	Revocation of broker's license suspends those of his salesmen	45-1407
Replacement	45-1405	Revocation of license for conviction of crime	45-1415
Salesmen	45-1405	Salesman terminating employment to notify Commission	45-1407
Sureties	45-1405		
Suits against	45-1405		
Terminating liability	45-1405		
To accompany application	45-1405		



**REAL ESTATE AND BUSINESS BROKERS' Sec.****LICENSING ACT—Continued**

Saving clause	45-1418
Suits to collect commission, plaintiff must prove his license	45-1407
Suspension of license on indictment for crime	45-1415
Suspension or revocation of license	45-1408, 45-1409
Accepting compensation from opposing parties without their knowledge as grounds	45-1408
Acting for opposing parties without their knowledge as grounds	45-1408
Acting without written consent of client as grounds	45-1408
Appeal from review	45-1409
Causes	45-1403
Course of misrepresentations and false promises as grounds	45-1408
Disregard or violation of licensing act as grounds	45-1408
Failure to account for money, documents or property as grounds	45-1408
Failing to restore bond after recovery on it as grounds	45-1408
False promises as inducements as grounds	45-1408
Fraudulent or dishonest dealing as grounds	45-1408
Guaranteeing profits on resale, as grounds	45-1408
Hearing before suspension or revocation	45-1409
Obtaining license by fraud as grounds	45-1408
Purchase from client without his knowledge as grounds	45-1408
Review in District Court	45-1409
Salesman accepting commissions unlawfully as grounds	45-1408
Salesman acting for another principal without knowledge of employer as grounds	45-1408
Substantial misrepresentation as grounds	45-1408
Unworthiness or incompetency as grounds	45-1408
Use of name or insignia of real estate association when not a member as grounds	45-1408
Transactions within act	45-1402

**REAL ESTATE BROKERS AND AGENTS**

Definition	45-1402
Employment to acquire site for school and other public buildings	1-812
Licensing act	45-1401—45-1418

**REAL ESTATE COMMISSION**

See **REAL ESTATE AND BUSINESS BROKERS' LICENSING ACT**

Creation	45-1403
Membership	45-1403

**REAL PARTY**

Levy on in attachment and garnishment	16-309
---------------------------------------	--------

**REAL PROPERTY**

Sec.

See **ABUTTING OWNERS; DECEDENTS' ESTATES; DEED; EMINENT DOMAIN; LEASES; PARTITION; STREETS AND OTHER WAYS; SURVEYORS; TAXATION AND FISCAL AFFAIRS**

Acknowledgments	45-401—45-412
Acknowledgments to deeds of corporations	45-302
After-acquired realty as subject to will	19-205
Alienation, rule against restraint	45-102
Assessment	47-701—47-723
Designation of property for	47-401—47-408
Expenses to be included in budget estimates	47-209
Attachment	16-308
Bonds and contracts relating to land, recording	45-505
Brokers	45-1401—45-1418
Certain provisions made applicable to personal property	45-823
Chattels real, rule against perpetuities applicable	45-103
Contingent interests, sale	45-1101—45-1103
Contracts of purchase and sale, effect of Statute of Frauds	12-302
Conveyable estates and methods of conveyance	45-101—45-106
Chattels real conveyable by deed or will	45-104
Contingent estates conveyable by will or deed	45-101
Estates good as executory devise, conveyable by deed	45-101
Freehold estates conveyable by deed or will	45-104
Future estates conveyable by deed or will	45-101
Future estates, rule against perpetuities	45-102
Land held adversely is conveyable	45-105
Life estates, conveyable by deed or will	45-106
Life estates, creating in terms for years	45-104
Present estates, conveyable by deed or will	45-101
Remainder on life estates created in terms for years	45-104
Rule against perpetuities	45-102
Vested estates conveyable by deed or will	45-101
Conveyance in fraud of creditors	12-401
"Covenant" effect in deeds	45-303
Covenants	45-303—45-309
Against having encumbered	45-307
Effect of "covenant" in deed	45-303
For further assurances	45-308
General warranty	45-304
Quiet enjoyment	45-306
Special warranty	45-305
Warranty by life tenant, void as to heir	45-309
Damage to, limitation of actions	12-201
Deeds	
Corporate deeds, requisites	45-302
Effective date	45-501
Execution	45-106
Not to be executed or acknowledged by attorney	45-401
Priority	45-502
Record as evidence	45-504
When not to be recorded	45-503



REAL PROPERTY—Continued		Sec.	REAL PROPERTY—Continued		Sec.
District property, injuring, penalty		22-3111	Estates pur autre vie		45-805
District use, condemnation		16-601	Chattel real after death of grantee or devisee		45-805
Electric company property, tampering, penalty		22-3115	Freeholds during life of grantee or devisee		45-805
Estates	45-801—45-822		Estates tail abolished		45-802
Classification		45-806	Fee simple estates	45-802, 40-803	
Conditions precedent		45-804	Absolute		45-803
Conditions subsequent		45-804	Estates of inheritance		45-802
Coparcenary estates abolished		45-817	Qualified		45-803
Fee simple	45-802, 45-803		Fieri facias, levy		15-210
Future estates	45-810—45-813		Forms for instruments		45-301
Joint tenancy		45-816	Deeds of corporations		45-302
Life estates		45-801	Deeds of trust for particular purposes		45-301
"Reversion" defined		45-809	Executor's deed		45-301
Tenancy by the entireties		45-816	Fee simple deed		45-301
Tenancy in common		45-816	By husband and wife		45-301
Estates at will	45-801, 45-804, 45-822		By one person		45-301
Chattel interests		45-804	Lease		45-301
Creation		45-822	Life estate deed		45-301
Description		45-822	Mortgage, with or without power of sale		45-301
Not liable to sale under execution as chattel interests		45-804	Trustee's deed under decree		45-301
Tenant after sale under mortgage, trust deed or execution without lease		45-822	For sale or for rent sign		7-1001
Termination		45-822	Penalty for violating law		7-1001
Estates by sufferance		45-801	Placing on property, regulations, number limited		7-1001
Chattel interests		45-804	Placing on sidewalk or parking prohibited		7-1001
Description of		45-820	Removal, Commissioners' power to require		7-1001
Not liable to sale under execution as chattel interests		45-804	Future estates		45-810
Estates by the month		45-821	Alienation		45-813
Estates by the quarter		45-821	Chattels real, application of rule against perpetuities		45-103
Estates for the life of a third person		45-805	Conditional limitation		45-811
Estates for years		45-801	Contingent		45-812
Chattels real		45-804	Definition		45-810
Description of		45-818	Freeholds		45-104
Estates from month to month		45-821	Remainder		45-811
Estates from quarter to quarter		45-821	Vested		45-812
Estates from year to year, good for only one year		45-819	Improvements, recovery for in ejectment		16-519
Estates in expectancy		45-808	Injuries, criminal offenses	22-3101—22-3122	
Alienable		45-815	Institutions of learning holding		29-407
Alienation by intermediate owner does not defeat		45-814	Reversion of unsold excess		29-408
Alienation by preceding owner does not defeat		45-814	Sale of excess		29-407
Descendible		45-815	Interpretation of instruments	45-201—45-205	
Destruction by disseizin does not defeat		45-814	"Bargain and sell" pass whole estate in absence of contrary showing		45-202
Destruction by forfeiture does not defeat		45-814	Conveyance construed to pass fee simple estate unless contrary intention appears		45-201
Destruction by merger does not defeat		45-814	"Covenant", effect when used in deeds		45-303
Destruction by surrender does not defeat		45-814	"Die without issue", meaning in deed or will		45-205
Divisible		45-815	"Die without leaving issue", meaning in deed or will		45-205
Future estates		45-808	Fee simple estate created unless contrary intention appears		45-201
Not void in creation for liability to defeat		45-814	Future estate dependent on person's death without heirs, issue or children defeated by birth of his posthumous children		45-204
Reversion		45-808	"Grant" passes whole estate in absence of contrary showing		45-202
Estates in possession		45-807	"Have no issue", meaning in deed or will		45-205
Estates of inheritance		45-801			
Fee simple estates		45-802			
Freehold estates		45-804			



REAL PROPERTY—Continued		Sec.	REAL PROPERTY—Continued		Sec.
Interpretation of instruments—Continued			Mortgages—Continued		
Posthumous children	45-204		Terms of sale of property	45-615	
Birth defeats future estate dependent on parent's death without heirs, issue or children	45-204		Trustee, appointment on death of mortgagee	45-611	
Take as though living at ancestor's death where future estates are limited to heirs, issue or children	45-204		Municipal purposes, acquisition for by District	1-105	
Remainder to heirs of life tenant	45-203		Notice to quit	45-901—45-906	
Fee simple estate in tenant not created	45-203		Ownership by aliens	45-1501—45-1505	
Heirs take fee simple estate by purchase	45-203		Alien corporations	45-1502	
Rule in Shelley's case abolished	45-203		Alien individuals	45-1502	
"That he has done no act to encumber the land," effect in deed	45-307		Corporations controlled by aliens	45-1503	
"That he will execute such further assurances of said land as may be requisite"	45-308		Effect of treaties	45-1502	
"That he will warrant generally the property hereby conveyed," effect in deed	45-304		Federal law extended to District	45-1501	
"That he will warrant specially the property hereby conveyed," effect in deed	45-305		Forfeiture of illegal holdings	45-1504	
"That the said grantee shall quietly enjoy said land," effect in deed	45-306		Inheritance	45-1502	
Warranty by life tenant, void as to heir	45-309		Legations and residences of foreign governments and their officials exempted	45-1505	
"With general warranty," effect in deed	45-304		Partition proceedings	16-1301—16-1306	
"With special warranty," effect in deed	45-305		Plats not to be recorded	45-506	
Words of inheritance unnecessary to create fee simple estate	45-201		Powers	45-1001—45-1019	
Joint tenants, liability between for waste	45-1304		Absolute power of disposition	45-1005—45-1007	
Land for United States use	16-619		To owner of particular estate for life or years, effect	45-1005	
Land in excess of District needs	16-601		To person to whom no particular estate is limited, effect	45-1006	
Landlord and tenant	45-901—45-934		Where no remainder is limited to grantee, effect	45-1007	
Notice to quit	45-901—45-906		Beneficial power	45-1004	
Life estates	45-801		Liability in equity	45-1010	
Freeholds	45-804		Definition	45-1001	
Maps not to be recorded	45-506		General and beneficial power to devise, effect	45-1008	
Mortgages	45-601—45-620		General power	45-1002	
Acknowledgment	45-601		Definition	45-1002	
Conveyance by non compos mentis mortgagee	45-620		General power in trust described	45-1011	
Defenses against foreclosure	45-612		When a beneficial power	45-1004	
Deficiency decree in personam on sale of property	45-616		Instruments executed by grantee of power, presumption of validity	45-1019	
Estate of mortgagee, construing	45-603		Manner of executing	45-1017	
Execution	45-601		Power to dispose by devise or will, will must be used	45-1018	
Expense and commission on sale	45-618		Power to dispose by grant cannot be executed by will	45-1018	
Foreclosure, decree without hearing on motion of defendant	45-606		Reservation of power by grantor	45-1009	
Infant mortgagee, compelling conveyance	45-609		Special and beneficial powers, liability in equity	45-1010	
Infant mortgagee may convey under court order	45-608		Special power	45-1003	
Joint mortgagees, survival of title and trust	45-604		Definition	45-1003	
Manner of recording	45-602		Liability in equity	45-1010	
Mortgagee may redeem prior mortgage	45-610		Special powers in trust classified	45-1012	
Mortgagee takes qualified fee simple	45-603		When a beneficial power	45-1004	
Payment into court not permitted, when	45-607		Trust powers	45-1011—45-1016	
Recording	45-601		Execution for benefit of creditors or assignees	45-1016	
Redemption by subsequent mortgagee	45-610		General powers in trust	45-1011	
Release after death of mortgagee	45-619		Group of beneficiaries to take equally, exception	45-1015	
Release on payment into court after suit	45-605		Imperative and compellable in equity	45-1013	
Replacement of deceased trustee	45-613		Right to select does not change imperative nature	45-1014	
			Special powers in trust	45-1012	
			Trustee with discretionary authority	45-1015	



REAL PROPERTY—Continued	Sec.
Preceding corporations, property of, vested in	
District	1-104
Preservation of attached property	16-314
Proceedings supplementary to execution	15-313
Real estate brokers	45-1401—45-1418
Real estate salesmen	45-1401—45-1418
Recorder of Deeds	45-701—45-710
Recovery	
Ejectment	16-501
Improvements in ejectment	16-519
Limitation of actions	12-201
Religious societies holding	29-501—29-516
Reversion described	45-809
Sale by Commissioners of District	9-301—9-306
Approval of National Capital Park and	
Planning Commission required	9-301
Authority conferred	9-301
Deeds, execution	9-301—9-303
Expenses, payment	9-302
Property no longer required for public	
purposes	9-301
Public or private sale authorized	9-301
Sale by executor, administrators, additional	
bond	20-104
Sale directed in will	18-604
Sale of contingent interests	45-1101—45-1103
Contingent limitation to issue of life ten-	
ants	45-1101—45-1103
Application by bill in equity	45-1102
Power of court of equity	45-1101
Proceeds deemed real estate	45-1103
Sale of land under jurisdiction of National	
Park Service	9-304—9-306
Abutting owners, preference	9-305
Call for bid	9-305
Cash or credit authorized	9-304
Expenses of sale, payment	9-305
Land no longer needed	9-304
Sale price	9-304, 9-305
Secretary of Interior authorized to sell	9-304
Sale of limited estate and interests therein	45-1104
Application for decree of sale	45-1104
Contingent remainders to issue of life	
tenants	45-1101—45-1103
Investment of proceeds	45-1104
Power of court of equity	45-1104
Salesmen	45-1401—45-1418
Sale when encumbered by dower	16-1305, 16-1306
School purposes, acquisition for by District	1-105
Search warrants	23-301—23-304
Service by publication on nonresident owners	13-108
Subjecting to sale for personal property taxes	
	47-1301—47-1305
Surveyor of District	1-601—1-629
Tax sales	47-1001—47-1015
Tenancies	
Agreement regarding notice	45-908
Notice to quit	45-901—45-906
Refusal to quit after notice, double rent	
for	45-907
Tenants in common, liability between for	
waste	45-1304
Trespass to, criminal offenses	22-3101—22-3122

REAL PROPERTY—Continued	Sec.
Trust deeds	45-601—45-620
Acknowledgment	45-601
Appointment of new trustee on death of	
trustee	45-611
Conveyance by non compos mentis	
trustee	45-620
Creditor buying at sale, rights	45-617
Defenses against enforcement	45-612
Deficiency decree in personam on sale of	
property	45-616
Estate of trustee, construing	45-603
Execution	45-601
Expense and commission on sale	45-618
Infant trustee, compelling conveyance	
by	45-609
Infant trustee may convey under court	
order	45-608
Joint trustees, survival of title and trust	45-604
Recording	45-601, 45-602
Release after death of trustee	45-619
Replacement of deceased new trustee	45-613
Terms of sale of property	45-615
Trustee failing to act, appointment of new	
trustee	45-614
Trustee takes qualified fee simple	45-603
United States property, injuring, penalty	22-3111
Unlawful entry on private property, penalty	22-3102
Use of public school buildings	31-801—31-809
Uses and trusts	45-1201—45-1203
Cestui que use takes legal title in passive	
trusts	45-1201
Dry trusts, beneficiary takes legal title	45-1201
Express trusts not contained in convey-	
ance to trustee, effect on purchaser for	
value without notice	45-1203
Implied and resulting trusts, effect on	
purchaser for value without notice	45-1203
Nominal trusts, beneficiary takes legal	
title	45-1201
Passive trusts, beneficiary takes legal	
title	45-1201
Statute of uses	45-1201
Uses to any of joint trustees gives them	
legal title	45-1201
Vandalism, penalty	22-3112
Vendor's lien, deficiency decree in personam	
on sale of property	45-616
Warranties	45-304, 45-305
General warranty	45-304
Special warranty	45-305
Warranty by life tenant void as to heir	45-309
Waste	45-1301—45-1304
Amercement and damages	45-1302
Forfeiture of lease	45-1301
Joint tenant committing, liability to other	
joint tenants	45-1304
License in writing required	45-1302
Reversioner forfeiting lease for waste of	
tenant who has assigned interest	45-1303
Tenant in common committing, liabil-	
ity to other tenants	45-1304
Treble damages	45-1301
Writ of waste	45-1301



<b>REAL PROPERTY—Continued</b>	<b>Sec.</b>
Widow of tenant in common, assignment of dower	16-1303
<b>RECEIVERS</b>	
See <b>FIDUCIARIES</b>	
Absconders' estates	20-701
Absentees' estates	20-701
Appointment in attachment and garnishment	16-314
As fiduciaries under income tax law	47-1543
Bonds and undertakings in District Court	28-2403
Bulk sales law, exemption	28-1704
Corporate income tax returns	47-1516
Involuntary dissolution of corporation at suit of creditors	29-727
Suit by United States to forfeit charter of corporation	29-722
Suits to vacate fraudulent conveyances	12-403
Voluntary dissolution of corporation	29-706—29-713

<b>RECEIVING EMBEZZLED PROPERTY</b>	
See <b>EMBEZZLEMENT</b>	
Penalty	22-1204

<b>RECEIVING STOLEN GOODS</b>	
See <b>STOLEN PROPERTY</b>	

<b>RECIPROCITY</b>	
Certified Public Accountant of other states, certification	2-906
Cosmetologists, applicants from another state or country	2-1316
Dental hygiene, practitioner from another state, admission to practice	2-326
Dentist from other state, admission to practice	2-308
Healing arts, issuance of license to practice	2-119, 2-121
Indigent insane, return to place of residence	3-110
Indigent poor persons, return to place of residence	3-110
License to practice healing arts	2-121
Failure to pass examination, issuance of license based on reciprocity prohibited	2-121
Issuance of license	2-121
Proof required of applicant	2-121
Notaries public of District, states, and foreign countries	1-503, 1-510
Nurses from other states, registration	2-405
Optometry, practitioners from other states, licensing in District	2-518
Pharmacy, practitioners from other states	2-604
Podiatry, practitioners from other states and countries	2-705
Veterinarians from other states, licensing	2-804

<b>RECKLESS DRIVING</b>	
Penalty	40-605

<b>RECORDATION</b>	
Bills of sale	42-101, 42-102
Indexing	42-102
Inspection by public permitted	42-102
Required	42-101
Transcription on recordation not required	42-102

<b>RECORDATION—Continued</b>	<b>Sec.</b>
Bonds and contracts in relation to land	45-505
Business enterprise covering two-thirds of square, order obliterating subdivision and alleys, filing and recording	7-308
Chattel mortgages or trusts	
Fee for	42-102
Indexing	42-102
Inspection by public permitted	42-102
Required, when	42-101
Transcription on recordation not required	42-102
Closing and readjusting streets and highways, recording of order and plats	7-404
Conditional sales	42-103
Effective from what date	42-103
Fee for filing	42-103
Indexing	42-103
Required, when	42-103
Writing required	42-103
Contracts for public improvements	7-602
Deeds	45-501—45-506
Dental hygienist, registration of license	2-324
Dentistry, license to practice registered with health officer	2-309
District opening or closing alleys on own land, maps	7-312
False certification of recordable instruments, penalty	22-1308
Fees	42-102, 42-103
License to practice healing art	2-118
Maps and plats not to be recorded	45-506
Michigan Avenue, plat showing abandonment and relocated portions	7-130
Mortgages	45-601
Motor vehicle liens	40-701—40-715
Opening and closing of alleys and minor streets	7-303, 7-305, 7-307
Business enterprise covering two-thirds of square, closing of alleys	7-305, 7-308
Dedication of new ways by property-owners	7-306
Order accepting dedication	7-303, 7-307
Petition by property-owners for change in location and closing of old alleys	7-306, 7-307
Permanent Highway Plan, recordation with surveyor	7-109
Personal property	42-101—42-103
Plats not to be recorded	45-506
Recordation of deed, contract, or conveyance with intent to extort money	22-1302
Recorder of deeds	45-701—45-710
Streets, abandonment or readjustment, recording of plats	7-113
Subdivisions outside city of Washington, recording of plans	7-125
Trust deeds	45-601

<b>RECORDER OF DEEDS</b>	
See <b>DEEDS</b>	
Appointment by President	45-701
Appointments by	45-702, 45-703
Employees	45-703
First deputy recorder	45-702
Second deputy recorder	45-702



RECORDER OF DEEDS—Continued	Sec.	RECORDS—Continued	Sec.
Appropriations authorized	45-710	Minutes of Board of Commissioners of District	1-214
Authority to take acknowledgment of deeds	45-402	Narcotic drug sales	33-411
Building, construction, public works loan	9-204, 9-208	Notary public	1-512, 1-513
Building, loan for construction	9-215—9-218	Poisons, sale	2-612
Amount	9-215	Police Department records	4-134
Approval of President	9-215	Complaint-books	4-134
Budgeting of principal and interest pay- ment	9-217	Open to public inspection	4-135
Interest on loan	9-217	Reports and returns of police kept and bound	4-137
Location of building	9-215	Service records of members of force	4-134
Purposes for which funds expended	9-216	Property of District	1-106
Repayment, period of amortization	9-217	Public, defacing, destroying, penalty	22-3107
Report of Commissioners to Congress	9-218	Superintendent of Weights, Measures, and Markets, record of inspection	10-106
Cooperative associations	29-806, 29-834, 29-835	Surveyor of District	1-605—1-609
Failure to file annual report, notice	29-835	Field notes	1-616
Filing and recording of articles of in- corporation	29-806	Indexing	1-607
Filing annual reports	29-834	Labeling of maps, charts, plats, and other drawings	1-607
Issuing certificate of incorporation	29-806	Plats and subdivisions	1-605
Deputy recorders	45-702, 45-703	Preservation of maps, charts, and records and papers generally	1-606
Filling office of recorder in vacancy	45-704	Property of District	1-608
First deputy	45-702	Public records	1-608
Appointment	45-702	Transcript, prima facie evidence	1-611
Duties	45-702	Transfer to successor in office	1-608
Second deputy		Transmission to successor in office	1-616
Appointment	45-703	Typewritten records authorized	1-609
Duties	45-703		
Salary	45-703		
Duties	45-701		
Employees	45-702, 45-703		
Appointment	45-703		
Fixing compensation	45-703		
Estimates to be included in District estimate	45-710		
False certification of recordable instruments, penalty	22-1308		
Fees	45-708, 45-709		
Enumeration	45-708		
Payment to collector of taxes	45-709		
Recording certificates of incorporation, duty	45-708		
Records	45-705—45-707		
Open to public inspection without charge	45-705		
Recopying certain records, expense	45-707		
Typewritten records legalized	45-706		
Typewritten records preferred	45-706		
Report of tax sales, collector of taxes filing	47-1006		
Typewriters, purchase authorized	45-706		
<b>RECORD ON APPEAL</b>			
Court of Appeals	11-205		
<b>RECORDS</b>			
Adoption proceedings, inspection on court or- der only	16-206		
Amending certification of record	13-309		
Board of Cosmetology	2-1302		
Board of Dental Examiners	2-303		
Board of Examiners and Registrars of Archi- tects	2-1024		
Board of Examiners in Veterinary Medicine	2-802		
Board of Optometry	2-508		
Board of Podiatry Examiners	2-702		
Board of Zoning Adjustment	5-420		
Boiler inspection	1-712		
Documentary evidence	14-401		
Juvenile Court	11-929		
		<b>RECREATION CENTERS</b>	
		Rules and regulations, power of Commission- ers to adopt	8-131
		<b>RECTIFICATION</b>	
		Definition of "manufacture" includes	25-103
		<b>REDUCTION PLANTS</b>	
		See GARBAGE	
		<b>RE-ENTRY</b>	
		By life tenant after ejectment proceedings held in absence	16-529
		<b>REFEREE</b>	
		See REFERENCE OF QUESTIONS OF LAW AND FACT	
		Fees	16-1715
		Powers	16-1703
		<b>REFEREE IN CASE OF NEED</b>	
		Negotiable instrument, payment of bill for honor	28-947—28-953
		Protest of bill for nonpayment condition prece- dent	28-943
		<b>REFERENCE OF QUESTIONS OF LAW AND FACT</b>	
		Accounts, actions on, reference to auditor	16-102, 16-103
		Appeals in common-law cases	16-1712
		Appeals in equity causes	16-1709
		At law	16-1701
		Award	16-1705
		Form	16-1706
		Modification, causes	16-1707
		Notice to parties	16-1705
		Setting aside, motion, causes	16-1707
		Time for filing	16-1705



REFERENCE OF QUESTIONS OF LAW		Sec.	REGISTER OF WILLS—Continued		Sec.
AND FACT—Continued			Penalty for charging for advice		19-411
Bill of exceptions		16-1711	Penalty for failure to post table of fees		19-407
Consent of all parties required		16-1701	Powers		19-403
Consent of all parties to referee named		16-1701	Proof of wills, taking testimony		19-306
Death of party, effect		16-1717	Table of fees to be posted		19-406
Ending reference		16-1705	Wills recorded with, as evidence		14-403
Exceptions are part of record on appeal		16-1713	REGISTRATION		
Exceptions to rulings of referee on questions of law		16-1710	See ACCOUNTANTS; ARCHITECTS; DENTISTS; HEALING ARTS PRACTICE ACT; NURSES; OPTOMETRY; PHARMACY		
In admiralty		16-1701	REGULATIONS		
In equity		16-1701	See BOILER INSPECTION; ELECTRICAL WIRING; PLUMBING		
Judgment or decree, effect		16-1708	Child labor, penalties for violating		36-215
Not to be made in divorce		16-1701	Consideration and adoption by Commissioners		1-214
Not to be made where party is under legal disability		16-1701	RELATOR		
Referee		16-1702	See QUO WARRANTO		
Additional powers in equity cases		16-1704	RELEASE		
Death		16-1718	District executing, procedure		1-214
Disability or refusal, rescinding reference		16-1714	Under writ of habeas corpus		16-806
Fees		16-1715	RELIGIOUS FAITH		
Misconduct, rescinding reference		16-1714	Consideration in appointing guardians		11-918
Oath		16-1702	Consideration in placement of children		11-918
Powers		16-1703	RELIGIOUS MEETINGS		
To fix time for hearing		16-1702	Disturbing, penalty		22-1107, 22-1114
Reference to arbitrator as at common law not affected		16-1719	RELIGIOUS SOCIETIES AND INSTITUTIONS		
Several referees, must be odd number		16-1716	See CHARITABLE, EDUCATIONAL, AND RELIGIOUS ASSOCIATIONS; CORPORATIONS IN GENERAL		
REFORMATORY			Authority to acquire land		29-501
See PRISONS AND PRISONERS			Certificate of trustees		29-503
Appropriations for realty by Congress to be lien		32-1003	Recording with recorder of deeds		29-503
Working capital for industrial enterprises		47-131	Verification		29-503
REFUNDS			Conveyances of realty not void for want of trustees		29-513
Fees			Corporate powers granted trustees		29-507
Applications to practice healing art		2-119	Directors		29-503—29-510
Building permit fees		5-430	Dissolution		29-701—29-729
Fees collected under Barber's Registration Law		2-1111	Not effected by failure to elect trustees		29-506
Park police, payments to retirement fund, refund		4-205	Realty reverts		29-511
Police and firemen's contributions to relief fund		4-504	District charitable funds not to be given		32-1008
Separation from force other than by retirement		4-504	District Court's power to appoint trustees for conveyances		29-514
Street improvement assessment levied under prior laws		7-632	General provisions		29-101, 29-105
Taxes by Commissioners of District		1-903	Income tax exemption		47-1502
REFUSE			Incorporation		29-601—29-606
See GARBAGE			Limitations on use of land		29-516
REGISTER OF WILLS			Name		29-502
Acts as clerk of Probate Court		19-409	Policy of government not to appropriate for		32-1008
Appointment and oath		19-401	Private schools for religious purposes included		29-512
Bond		19-402	Real property		29-501, 29-508—29-516
Deputies		19-403	Appointment of trustees by District court to receive conveyances		29-514
Expenses to be included in annual estimates		19-405	Conveyances, limitation		29-509
Fees, as clerk of Probate Court		11-1503	Conveyances not void for want of trustees		29-513
Fees to be deposited		19-404	Limitation on use		29-516
Monthly report of estate qualifications to assessor		47-1617	Power to execute leases		29-510
Not to practice law		19-410	Power to execute mortgages		29-510
Penalty for charging excessive fees		19-408	Reversion on dissolution		29-511
			Title to vest in trustees		29-508



RELIGIOUS SOCIETIES AND INSTITU- TIONS—Continued		Sec.	REPLEVIN—Continued		Sec.
Suits by and against trustees		29-515	Pleading by defendant		16-1808
Trustees	29-502—	29-510	Publication to defendant when not found		16-1806
Appointment by District Court		29-514	Undertaking		16-1804
Certificate		29-503	REPORTER		
Failure to elect does not affect dissolution		29-506	Court of Appeals		11-206
Power to convey realty limitation		29-509	REPORTS		
Power to lease society's realty		29-510	Alley Dwelling Authority	5-106, 5-107	
Power to mortgage society's realty		29-510	Auditor's	16-102—	16-105
Removal		29-504	Board of Accountancy		2-908
Successors to file certificates		29-505	Board of Barber Examiners		2-1103
Suits by and against		29-515	Board of Dental Examiners		2-306
Tenure		29-504	Board of Examiners and Registrars of Archi- tects		2-1010
To be vested with title to realty		29-508	Board of Examiners in veterinary medicine		2-802
To have corporate power		29-507	Board of Optometry		2-508
Vacancies, filling		29-504	Board of Pharmacy		2-608
Want of, effect on conveyances		29-513	Board of Public Welfare		3-123
RENT			Commissioners of District, annual report to Congress		
See LEASES			Illustrations, use prohibited		1-239
Ejectment		16-513	Printing discontinued, original copy kept on file		1-240
Real property for sale or rent, sign regulation, penalty		7-1001	Commissioners of District, special reports, printing discontinued, original kept on file		1-240
Rock Creek Park buildings and grounds		8-149	Commission on Licensure to Practice the Heal- ing Art		2-138
Vaults under sidewalk		7-901	Court of Appeals		11-206
Wharf property		9-102	Cost per volume		11-207
RENUNCIATION			Health officer to Commissioners		6-106
Executor refusing to serve		20-308	Major and superintendent of police		4-127
Holder of negotiable instrument renouncing right, effect		28-804	National Capital Park and Planning Commis- sion		8-107
Of devises, effect on dower rights		18-211	Nurses' Examining Board		2-408
REPAIRS			Property custodian		1-309
See STREETS AND OTHER WAYS			Public buildings, construction, report of Com- missioners to Congress		9-207
Streets, payment of cost		7-611	Sanitary inspectors		6-105
REPLEVIN			Settlement of claims against District by Com- missioners		1-904
Affidavit, content		16-1803	RESERVATIONS		
Declaration, form		16-1802	Buildings, construction, authorization by Con- gress required		8-133
Default		16-1807	Cutting trenches or removing material from, permit required, penalty	7-615, 7-616	
Demand for possession unnecessary		16-1801	Encroachments, duty of Secretary of Interior to prevent, property belonging to United States		7-1209
Failure of officer to obtain possession, effect		16-1805	Improvement, contracts in excess of appro- priations prohibited		7-620
Judgment for defendant, return of goods		16-1812	Names, powers of Commissioners	7-107, 7-112	
Judgment for plaintiff		16-1813	Number 8 transferred to Commissioners, pur- pose		8-138
Measure of damages		16-1811	Number 13, transfer for use as burial ground for indigent dead		8-141
Motion for return of property		16-1809	Number 32, jurisdiction transferred to Com- missioners, purpose		8-136
Notice to officer of intent to move, effect		16-1810	Number 185		8-126
Objection to sufficiency of surety		16-1809	Use as property yard, reservations		8-126
Procedure		16-1809	Use for park purposes authorized		8-126
Municipal Court	11-725—	11-732	Number 290 transferred to Commissioners of District		8-137
Affidavit		11-725			
Damages	11-731, 11-732				
Declaration, form of		11-725			
Defendant not found, publication		11-727			
Motion for return of property		11-730			
Pleading, not guilty or special plea		11-728			
Property not found, procedure		11-726			
Quashing writ		11-729			
Renewal of writ		11-726			
Retention by marshal		11-729			
Return of property		11-727			
Sufficiency of undertaking		11-729			
Undertaking		11-725			
Orders for decrees in equity for delivery of chattel, enforcement		11-328			



<b>RESERVATIONS—Continued</b>		<b>Sec.</b>	<b>REVERSION—Continued</b>		<b>Sec.</b>
Part of park system		8-108	Closing of streets and highways, reversion of title, abutting owners		7-123
Public convenience station established, transfer of jurisdiction		8-139	District of Columbia acquiring land and closing alleys		7-309
Snow and ice, cleaning from sidewalk		7-802	Highways and streets abandoned under Permanent Highway Plan		7-118
Widening of roadways		8-127			
<b>RESERVOIR ROAD</b>			<b>REVIEW</b>		
Widening, use of land owned by United States authorized		7-126	See <b>APPEALS</b>		
<b>RESIDENCES</b>			Appeals from District Court to Court of Appeals		17-101
See <b>DWELLINGS</b>			Final decree		17-101
Civilian Commissioners of District		1-206	Final judgment		17-101
Divorce actions, requirement in		16-401	Final order		17-101
Fire Department members		4-409	Interlocutory decrees		17-101
Police Department members		4-132	Interlocutory decrees in criminal cases excepted		17-102
<b>RESIGNATION</b>			Appeals from Juvenile Court to Court of Appeals		11-934
Firemen from force		4-407	Appeals from Municipal Court to Court of Appeals		11-723, 17-104
Policeman		4-125	Appellant's recognizance		17-104
<b>RES JUDICATA</b>			Application for discretionary writ of error		17-104
Bar to pleadings		13-2120	Stay of execution		17-104
Pleadings to bar		13-220	Appeals from Police Court to Court of Appeals		17-103
<b>RESPITES</b>			Bill of exceptions, petition		17-103
Commissioners' power to grant		1-220	Defendant's recognizance		17-103
<b>RESTAURANTS</b>			Discretionary writ of error in behalf of defendant		17-103
Apartment house, license		47-2329	Discretionary writ of error in behalf of District		17-103
Definition		47-2327	Discretionary writ of error in behalf of United States		17-103
License		47-2327	Notice of intention		17-103
Defrauding, penalty		22-1301			
Lien on baggage of patron		34-103—34-105	<b>REVOCAION</b>		
<b>RESTRAINT OF TRADE</b>			Cosmetologist's license or certificate		2-1304
Cooperative association operations		29-842	Decree for legal separation		16-404
<b>RESTRICTIVE INDORSEMENT</b>			Dentist's license to practice		2-311, 2-312
See <b>NEGOTIABLE INSTRUMENTS</b>			Letters of administration		20-106
<b>RESURFACING</b>			Letters testamentary		20-106
See <b>STREETS AND OTHER WAYS</b>			License to practice healing arts		2-123
<b>RETENTS</b>			Conviction of felony, appeal, effect		2-131
Public contracts, retention of percentage of final payment		1-807	Plumber's licenses, ground		2-1405
<b>RETIREMENT</b>			Steam and other operating engineers' licenses, ground		2-1505
See <b>POLICE AND FIREMEN'S RELIEF FUND</b>			Wills		19-103
Park Police		4-305	<b>REWARDS</b>		
Park Police brought within retirement law		4-515	Police and Firemen's Relief Fund		4-503
White House Police		4-305	Police receiving compensation from person arrested or liable to arrest prohibited		4-175
<b>RETIRING AND RELIEF BOARD</b>			Police services		4-129
See <b>POLICE AND FIREMEN'S RELIEF FUND</b>			Acceptance by member of Board of Commissioners prohibited		4-129
<b>REVENUE</b>			Failure to give notice of receipt cause for removal		4-129
Water rates used exclusively for maintenance and repair of water system		43-1522, 43-1523	Members of force, acceptance prohibited, exception		4-129
<b>REVERSION</b>			Meritorious and extraordinary services		4-129
Alley not an original alley closed		7-302	Police and Firemen's Relief Fund		4-129
Alleys closed by dedication of new alleys		7-303			
Alleys less than 10 feet wide, closing, title to land		7-304	<b>RHUBARB</b>		
Closing and readjusting of streets		7-401	Sale by bunch authorized		10-115
Title to closed street, when reverts to abutting owners		7-401			



<b>RIGHT OF ACCESS</b>	Sec.	<b>R STREET NORTHWEST</b>	Sec.
District of Columbia acquiring land and closing alleys	7-309	Abandonment in part authorized	7-123 note
<b>RIGHT OF ENTRY</b>		<b>RUBBISH</b>	
Board for Condemnation of Insanitary Buildings	5-601	Accumulation prohibited	6-801
Fire escapes and safety provisions, correction	5-314	<b>RULE IN SHELLEY'S CASE</b>	
Police, felony suspected	4-141	Abolished	45-203
<b>RIGHTS OF WAY</b>		<b>RULES AND REGULATIONS</b>	
Streets and other public ways through cemeteries	1-615	Commissioners of District, general authority to make	1-224—1-231
<b>ROADWAY</b>		Equity Court term, practice and procedure	1-325
Improvement, assessments for curbs and gutters	7-623	Juvenile Court	11-930
<b>ROBBERY</b>		Municipal Court	11-722
Attempted, penalty	22-2902	Small Claims and Conciliation Branch, Municipal Court	11-815
Definition	22-2901	United States District Court's power to adopt at general term	11-312
Grave robbery	2-206, 22-3103	Effective date	11-312
Killing while perpetrating, murder in the first degree	22-2401	<b>RUM</b>	
Penalty	22-2901	Definition of "spirits" includes	25-103
<b>ROCK CREEK</b>		<b>RUSSIAN BATH ESTABLISHMENTS</b>	
Lands along, clearing title of United States	8-104	License	47-2311
Protection against injury or diminution of flow of water	8-151	Approval by major and superintendent of police	47-2311
Protection against pollution and obstruction	8-158	Fee	47-2311
<b>ROCK CREEK AND POTOMAC PARKWAY</b>		Revocation for unlawful acts	47-2311
Buildings fronting, plans, approval by Commission of Fine Arts	5-410	Unlawful acts enumerated	47-2311
<b>ROCK CREEK BRIDGE</b>		<b>SAFE DEPOSIT BOXES</b>	
Maintenance and repair, apportionment of cost	7-503	See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>	
<b>ROCK CREEK PARK</b>		<b>SAFETY DEVICES</b>	
Acceptance of dedicated land	8-150	See <b>FIRE ESCAPES AND SAFETY PROVISIONS</b>	
Arable land, rental	8-149	Steam boilers, prohibiting operation, devices not in working order	1-706
Area	8-146, 8-147	<b>SAINT ELIZABETH'S HOSPITAL</b>	
Bridle paths	8-148	See <b>HOSPITALS AND ASYLUMS</b>	
Buildings fronting, plans, approval by Commission of Fine Arts	5-410	<b>SAL AMMONIAC</b>	
Buildings within grounds, rental	8-149	Sale by other than pharmacist	2-601
Dedication of land	8-146	<b>SALARIES</b>	
Director of National Park Service, control over	8-148	Board of tax appeals	47-2402
Establishment	8-146	Board of Zoning Adjustment	5-426
Footways	8-148	Clerk of District Court	11-403
Parkway connecting with Potomac and Zoological Parks	8-158—8-160	Corporation counsel, additional compensation as general counsel of Public Utilities Commission	43-204
Part of District park system	8-148	Court of Appeals judges	11-202
Roadway	8-148	Funds from which payable	11-210
Rock Creek, protection of flow of water	8-151	Director of social work, Juvenile Court	11-922
<b>ROLLS</b>		Engineer Commissioner	1-204
Exception from weight regulations concerning bread	10-113	Fire Department	
<b>ROOMING-HOUSE</b>		Members, deductions for relief fund	4-503, 4-504
Definition	5-312	Personnel	4-405
<b>ROOSEVELT</b>		Privates	4-802
See <b>THEODORE ROOSEVELT ISLAND</b>		Salary schedule	4-801
<b>ROOSEVELT MEMORIAL ASSOCIATION</b>		Juvenile Court Judge	11-920
Theodore Roosevelt Island, acceptance of gift by National Park Service	8-164	Not assignable	28-2503
		Park police	4-203, 4-204
		Motorcycle police, extra compensation	4-204
		Superintendent, extra compensation	4-204
		People's counsel, Public Utilities Commission	43-205
		Police Court	11-624
		Judges	11-601



**SALARIES—Continued****Police Department**

Members, deductions for relief fund	4-503, 4-504
Officers and privates	4-108
Privates	4-802
Salary schedule	4-801
Public utilities commissioners	43-201
Second deputy recorder of deeds	45-703
Secretary of Board of Cosmetology	2-1302
Secretary of Nurses' Board of Examiners	2-408
Secretary-treasurer of Optometry Board	2-507
Surveyor of District	1-601
Teachers, school officials, employees	31-610
United States District Court Judges	11-302
Unused appropriation, reversion to treasury	1-310

**SALES**See **BULK SALES; PROPERTY CLERK; REAL PROP-****ERTY; SALES, UNIFORM ACT**

Absolute, under Uniform Sales Act	28-1101
Alcoholic beverages	
Intoxicated persons	25-131
Minors,	25-121
Automatic vending devices, regulations concerning	10-109
Bread, regulations concerning sale	10-113
Charcoal, sale by weight required, regulation	10-111
Coal, sale by weight required, regulations	10-111
Coke, sale by weight required, regulations	10-111
Conditional, under Uniform Sales Act	28-1101
Definition, Uniform Sales Act	28-1101
Effect of Statute of Frauds	12-304
Ice, sale by weight, regulation	10-112
Milk and cream, regulations concerning	10-114
Narcotic drugs, unauthorized sales of	33-402
Net weight	10-103
Products of District Training School	32-606
Property of District unfit for service, proceeds credited to appropriation	1-818
Proration of price with reference to quantity sold	10-123
Public auction permit law	47-2201—47-2208
Sales ticket, duty to furnish, content	10-110
Sales to infants under Uniform Sales Act	28-1102
Sales to mental incompetents under Uniform Sales Act	28-1102
Selling merchandise to minors for public resale, penalty	36-223
Unclaimed freight, by common carrier	44-101—44-103
Warranties, under Uniform Sales Act	28-1111—28-1116

**SALES, UNIFORM ACT**

Absolute sale	28-1101
"Acceptance" defined	28-1308
Acceptance of goods	28-1301
Agents, effect of statute of frauds	28-1104
Auction sales	28-1205
Each lot is subject to separate contract	28-1205
Grounds for recession for fraud	28-1205
Reservation of right to bid by seller	28-1205
When complete	28-1205
Bill of lading, effect on transfer of property	28-1204
Breach of conditions	28-1111

Sec.

**SALES, UNIFORM ACT—Continued**

Sec.

Buyer, option when goods have been destroyed	28-1107
Buyer's remedies	28-1505
Action for damages for breach	28-1507
Action for damages for nondelivery	28-1505
Action for specific performance	28-1506
For breach of warranty	28-1507
Keep goods, set up recoupment for breach	28-1507
Recovery of interest, special damages	28-1508
Refusal to accept on account of breach	28-1507
Rescission for breach of warranty	28-1507
Capacity to buy and sell	28-1102
Cases not provided for	28-1603
Conditional sale	28-1101
Conditions not performed, remedies of parties	28-1111
Contracts	
Acquisition of goods based on contingency	28-1105
Contingency determining sellers' acquisition	28-1105
Form	28-1103
Oral	28-1103
Partly written, partly oral	28-1103
Written	28-1103
Value of \$500 or over	28-1104
"Acceptance" defined	28-1104
Partial acceptance of delivery	28-1104
Partial payment	28-1104
Voidability	28-1104
Written contract or memorandum	28-1104
Contract to sell	
Between part owners	28-1101
Definition	28-1101
Fungible goods	28-1106
May be absolute	28-1101
May be conditional	28-1101
Undivided shares	28-1106
Definitions	
Acceptance	28-1308
Action	28-1606
Buyer	28-1606
Defendant	28-1606
Deliverable state	28-1606
Delivery	28-1606
Divisible contract to sell or sale	28-1606
Document of title to goods	28-1605
Existing goods	28-1105
Express warranty	28-1112
Fault	28-1606
Fungible goods	28-1606
Future goods	28-1105, 28-1106
Goods	28-1606
In good faith	28-1606
Insolvent person	28-1606
Necessaries	28-1102
Negotiable document of title	28-1211
Order	28-1606
Person	28-1606
Plaintiff	28-1606
Property	28-1606
Purchaser	28-1606
Purchases	28-1606



SALES, UNIFORM ACT—Continued		Sec.	SALES, UNIFORM ACT—Continued		Sec.
Definitions—Continued			Interpretation—Continued		
Quality of goods		28-1606	Enforcement of rights		28-1602
Sale		28-1606	Variation of implied obligations		28-1601
Seller		28-1606	Necessaries		
Specific goods		28-1606	Definition		28-1102
Unpaid seller		28-1401	Liability of infants		28-1102
Value		28-1606	Liability of mental incompetents		28-1102
Delivery and acceptance of goods	28-1301—28-1311		Sales to infants		28-1102
Acceptance, definition		28-1308	Sales to mental incompetents		28-1102
Acceptance does not bar action for dam-			Negotiable document of title		28-1211
ages or breach of warranty		28-1309	Attachment of subject goods only when		
Buyer's liability for non-acceptance		28-1311	negotiation is stopped		12-1223
Delivery		28-1303	Creditor's remedies to reach		12-1224
Delivery and payment generally concur-			Definitions		28-1211
rent conditions		28-1302	Holder may negotiate		28-1216
Delivery, mixed with other goods		28-1304	Liability of endorser, limitation		28-1221
Delivery of wrong quantity		28-1304	Marked "not negotiable," character un-		
Delivery to carrier on behalf of buyer		28-1306	changed		28-1214
Seller's obligation to give notice to			Negotiation by delivery		28-1212
insure		28-1306	Negotiation by endorsement		28-1213
Seller's obligation to make reasonable			Negotiation to bona fide purchaser of		
contract		28-1306	tainted document		12-1222
Demand for delivery		28-1303	Rights and title of person to whom nego-		
Duty of buyer to accept and pay for		28-1301	tiated		28-1217
Duty of seller to deliver		28-1301	Transfer without endorsement		28-1219
Expense of delivery		28-1303	Warranties on sale		28-1220
Installment delivery		28-1305	Nonnegotiable document of title		
Manner of delivery		28-1303	Transfer		28-1215
Place of delivery		28-1303	Warranties on sale		28-1220
Rightful rejection, buyer not bound to			Not applicable to mortgages		28-1605
return		28-1310	Obligations, implied, variation		28-1601
Right of buyer to examine		28-1307	Option of buyer when goods have been de-		
Sellers' rights when buyer wrongfully			stroyed		28-1107
rejects		28-1311	Price		28-1109
Time for delivery		28-1303	Determined by course of dealing		28-1109
Delivery to infants		28-1102	Fixed by contract		28-1109
Delivery to mental incompetents		28-1102	Later agreement		28-1109
Destruction of goods contracted to be sold			Payable in personalty		28-1109
Option of buyer		28-1108	Payable in realty, exempt from act		28-1109
When contract is void		28-1108	To be fixed by third party who fails		28-1110
Destruction of goods sold		28-1107	To be fixed by third party, whom party		
Knowledge of seller		28-1107	prevents		28-1110
Option of buyer		28-1107	When "reasonable price"		28-1109
When sale is void		28-1107	Remedy of buyer, conditions not performed		28-1111
Documents of title, rights of transferee		28-1218	Remedy of seller, conditions not performed		28-1111
Documents of title, warranties on sale		28-1220	Reservation of right to possession		28-1204
Effecting purpose of uniformity		28-1604	Risk of loss		28-1206
Effect on prior contracts		28-1607	Sale by description, implied warranty		28-1114
Enforcement of rights		28-1602	Sale by sample, implied warranties	28-1114, 28-1116	
Existing goods		28-1105	Bulk corresponds with sample		28-1116
"Express warranty" defined		28-1112	No defects rendering unmerchantable un-		
Formation of contract	28-1101—28-1116		less apparent on examination of sam-		
Form of contract		28-1103	ple		28-1116
Fungible goods, contract and sale		28-1106	Reasonable opportunity to compare bulk		
Future goods		28-1105	and sample		28-1116
Present sale as contract to sell		28-1105	"Sale" defined		28-1101
Implied obligations, variation		28-1601	Sales		
Infants, liability for necessities		28-1102	Absolute		28-1101
Insane persons, liability for necessities		28-1102	Auction		28-1205
Interpretation	28-1601—28-1608		Between part owners		28-1101
Cases not provided for		28-1603	Conditional		28-1101
Definitions		28-1606	Fungible goods		28-1106
Effecting purpose of uniformity		28-1604	To infants		28-1102
			Undivided share		28-1106



SALES, UNIFORM ACT—Continued		Sec.	SALES, UNIFORM ACT—Continued		Sec.
Seller's remedies		28-1401—28-1411	Transfer of title—Continued		
Action for conversion		28-1504	Seller's retention fraudulent, creditor may treat sale as void		28-1210
Action for damages for nonacceptance		28-1502	Undivided shares, contract and sale		28-1106
Action for detention		28-1504	"Unpaid seller" defined		28-1401
Action for price		28-1501	Variation of implied obligations		28-1601
Effect of negotiable document of title		28-1411	Warranties		28-1112
Insolvency of buyer, stoppage in transit		28-1406	"Express" defined		28-1112
Lien after partial delivery		28-1404	Express warranty, effect on implied warranty		28-1115
Lien on goods still possessed, for non-payment		28-1402	Implied warranties		28-1113
Lien, when exercised		28-1403	Express warranty does not negative generally		28-1115
Lien, when lost		28-1405	Free from encumbrance		28-1113
Notice of rescission		28-1503	In sale by sample		28-1115
Recovery of interest, special damages		28-1508	Merchantable quality when sold by description		28-1115
Resale of goods		28-1409	None when inspection is made, unless defects are hidden		28-1115
Right to resell		28-1409	None when sold under patent name		28-1115
Validity of sale		28-1409	None when sold under trade name		28-1115
Rescission of transfer of title		28-1410	Quality or fitness, usage of trade		28-1115
Right of resale for nonpayment		28-1402	Quiet possession		28-1113
Right to rescind for nonpayment		28-1402	Reasonable fitness when sold for purpose		28-1115
Stoppage in transit			Reliance on seller's skill or knowledge		28-1115
Insolvency of buyer		28-1402	Right to sell		28-1113
Ways of exercising right		28-1408	Sale by description		28-1114
When goods are in transit		28-1407	Sale by sample		28-1114
"Unpaid seller" defined		28-1401			
When property has not passed		28-1402			
When right of lien may be exercised		28-1403			
Short title		28-1608			
Statement of value or opinion is not warranty		28-1111	SAL SODA		
Statute of frauds		28-1104	Sale by other than pharmacist		2-601
"Acceptance" defined		28-1104	SANATORIUMS		
Application		28-1104	See HOSPITALS AND ASYLUMS		
Stoppage in transit		28-1406	SAND		
Transfer of property	28-1201—28-1206		Placing on icy sidewalk		7-802—7-804
Intention of parties, determination	28-1202		SANITARY INSPECTORS		
Appropriation of goods to contract for unascertained or future goods with assent	28-1203		See INSPECTORS		
Contract requiring delivery, transfer when delivery is made	28-1203		SANITATION		
Delivery on approval, trial, satisfaction, transfer on acceptance or failure to reject	28-1203		See INSANITARY BUILDINGS; MATTRESSES		
Sale on option to return, transfer on delivery, with right to revest	28-1203		SATURDAY		
Specific goods, not ready for delivery, transfer when made deliverable	28-1203		Negotiable instrument becoming due on, date payable		28-616
Specific goods ready for delivery, transfer with contract	28-1203		Presentment of bill of exchange		28-922
Property in specific goods, intention of parties determines passing	28-1202		SAVINGS BANKS		
Property passes only when goods are ascertained	28-1201		See BANKS AND OTHER FINANCIAL INSTITUTIONS		
Specific goods	28-1202		SAVINGS COMPANIES		
Unascertained goods	28-1201		See BANKS AND OTHER FINANCIAL INSTITUTIONS		
Transfer of title			SCALE		
Sale by person not the owner, no better title	28-1207		Plats and squares and subdivisions of city		1-610
Sale by person with voidable title, good title transferred	28-1208		SCALES		
Second sale where goods remain with seller, good title transferred	28-1209		See WEIGHTS, MEASURES, AND MARKETS		
			Public scales, licensing and locating		10-128
			Sale or interest in sale by superintendent of weights and measures prohibited		10-125
			Specifications, power of Commissioners of District to establish		10-127
			Weighmasters, appointment by Commissioner, fees		10-128



<b>SCHOOL BUILDINGS</b>	Sec.	<b>SEALS—Continued</b>	Sec.
Acquisition of sites	1-812	Police Court	11-608
Employment of agents in purchasing	1-812	Probate Court	11-505
Payment of commission to more than one person or firm prohibited	1-812	Real Estate Commission	45-1403
Regard had for future enlargement	1-812	Register of Wills	11-505
New buildings, regard had for future enlargement	1-812		
<b>SCHOOLS</b>		<b>SEARCHES AND SEIZURES</b>	
See EDUCATION; INSTITUTIONS OF LEARNING		Accused acquitted, return of property	23-304
Civil Service, exception of school officers and teachers	1-217	Alcoholic beverages, tax not paid	25-124
Definition, Healing Arts Practice Act	2-102	Delivery of property to and safekeeping of property by marshal	23-302, 23-303
Real estate for school purposes, power to acquire	1-105	Destruction of property seized	4-146, 23-304
Religious schools	29-512	False weights and measures	10-103
Seduction of pupil by teacher, penalty	22-3002	Fishing nets and appliances, confiscation on conviction of owner	22-1608
<b>SCIENCE</b>		Gaming-houses	4-145
Corporations for	29-601	Houses of ill-fame	4-145
<b>SCIENTIFIC INSTITUTIONS</b>		Jurisdiction of District Court of United States for District	11-306
Income tax exemption	47-1502	Lewd and obscene public amusement places	4-145
Personal property exempted from taxation	47-1208	Lotteries	4-145
<b>SCIRE FACIAS</b>		Mattresses manufactured or renovated in violation of law	6-607, 6-608
See JUDGMENTS AND DECREES		Destruction, order	6-608
Abolished so far as United States District Court concerned	15-204 note	Investigations and inspections	6-607
Decree in equity for payment of money, revival	15-218		
Election to issue on judgment	15-205	<b>SEARCH WARRANTS</b>	
Indorsement of writ	15-207	See CRIMINAL PROCEDURE	
Issuance on judgment	15-204	Affidavit, form	23-301
Levy on money, procedure	15-211	Alcoholic beverages, unlawful manufacture or sale	25-129
Proceedings in aid of execution	15-302	Complaint for issuance	23-301
Property subject to levy	15-210	Cruelty to animals, complaint	22-805
<b>SCONES</b>		Discovery of registered milk containers	48-205
Exception from weight regulations concerning bread	10-113	Execution by police	4-138
<b>SCOTT SQUARE</b>		Game laws, inspection of premises for violations	22-1616
Street fronting, railroads prohibited	7-1202	Grounds for issuing	23-301
<b>SEA FOODS</b>		Jurisdiction to issue	23-301
Wholesale dealers, license	47-2327	Narcotic drugs	33-414
<b>SEALS</b>		Resisting officer serving warrant	33-414
Board of Cosmetology	2-1302	Plants infested with insects or disease infected	6-904
Board of Optometry	2-508, 2-515	<b>SECOND-HAND CLOTHING STORES</b>	
Board of Pharmacy	2-607	Commissioners' power to provide for inspection	1-224
Board of Podiatry Examiners	2-702		
Commission on Licensure to Practice the Healing Art	2-103	<b>SECOND-HAND DEALERS</b>	
Counterfeiting seal prohibited	2-126	Definition	47-2339
Department of Insurance	35-401	License	47-2339
District of Columbia	1-102	Fee	47-2339
Juvenile Court	11-904	Revocation for buying stolen goods	47-2339
License seal	47-2301	Police Department, powers and duties	4-147, 4-148, 4-150
Negotiability of instruments unaffected	28-107	Examination of books and premises	4-148
Notaries public	1-505—1-507, 1-514	Interfering with officer, penalty	4-150
Authentication of official act	1-505	Supervision and inspection	4-147
Deposit of impression with clerk of District Court	1-506		
Exemption from execution	1-507	<b>SECRETARY OF AGRICULTURE</b>	
Fee for certificate of seal	1-514	Plant disease and insect pests, control, powers and duties	6-904
Required to obtain	1-505		
		<b>SECRETARY OF DISTRICT</b>	
		Contracts filed with	1-803
		<b>SECRETARY OF INTERIOR</b>	
		Assessing and collecting costs of improvement of streets about Capitol	47-1107



SECRETARY OF INTERIOR—Continued		Sec.	SERVICE OF PROCESS		Sec.
Beach Parkway, exchange of land	8-121, 8-123		See NOTICES; PROCESS; PUBLICATION OF NOTICE		
Columbia Institution for the Deaf, supervising	31-1022		Actions against District		1-901
Encroachments upon streets, square, or reservations belonging to United States	7-1209		Eminent domain, land for streets		7-204
Duty to prevent	7-1209		Fire escapes and safety provisions, notice requiring construction	5-310, 5-315	
Prevention of erection of building	7-1209		Juvenile Court		11-910
Report to Congress	7-1209		Order closing streets and highways		7-404
Freedmen's Hospital, direction	32-317		Patent Law infringement cases		11-307
Heat from Central Heating Plant, furnishing to District building	9-103, 9-104		SERVICE PIPES		
Insane criminals, certification to	24-301		Permit system of public improvement, assessment of costs		7-608
Lands along Potomac and Anacostia River and Rock Creek Park, clearing title	8-104		SERVICE RECORDS		
Providing education for indigent blind	31-1019		Police Department, members of force		4-134
Sale of real estate under National Park Service	9-304-9-306		Open to public inspection		4-135
Transfer of feeble-minded mutes to state institutions	31-1009		SERVICE SEWERS		
Valuation of United States property in District	47-723		See WATER DEPARTMENT		
SECRETARY OF LABOR			Defined		43-1517
Prevailing wage rate, determination	1-815		SERVICE STATIONS		
SECRETARY OF TREASURY			License		47-2334
Advancing funds on requisition of Commissioners of District	47-2412		SET-BACK LINES		
Public Works Administration loan to District, interest rate, determination	9-214		See BUILDING LINES		
SECURITIES			SET-OFF		
See BONDS AND OTHER SECURITIES			Action by or against executor, administrator	16-1908	
SEDUCTION			Benefits against damages, eminent domain, land for streets	7-211	
Definition, penalty	22-3001		Deemed on action by defendant	16-1903	
Teacher, of pupil by	22-3002		Effect of assignment	16-1904	
SENATE			Form of plea	16-1902	
Sergeant at Arms, Capitol Building and grounds, powers	9-105		In actions against principal and surety	16-1906	
SENTENCES			Judgments	16-1909	
Special terms of United States District Court	11-313		Part only set-off	16-1905	
SEPARATE MAINTENANCE			Plaintiff may not dismiss, but has additional defenses	16-1903	
See DIVORCE			Small claims and conciliation branch, Municipal Court	11-809	
SEPARATION			What can be set off	16-1901	
Voluntary separation	16-403		Where plaintiff is trustee	16-1907	
Divorce	16-403		SEWERS		
Legal separation	16-403		Agreement for use of District sewers by Maryland	1-817	
SEPARATION FROM BED AND BOARD			Payment of share of cost by Maryland	1-817	
See DIVORCE			Purpose of agreement	1-817	
SEQUESTRATION			Building and lot connections	6-401-6-404	
See DIVORCE			Certification of necessity	6-401	
Divorce actions	16-410		Conditions requiring connections	6-401	
Enforcement of decrees in equity	11-326		Duty to make connections	6-401	
Orders of Probate Court, enforcement by sequestration	11-512		Failure to make connections after notice, penalty	6-403	
Probate Court	11-510, 11-512		Nonresident owners, making at public expense, cost taxed against premises	6-404	
SERGEANTS			Work done in accordance with regulations	6-402	
Fire Department	4-404		Commissioners of District, control over and repair	7-101	
Salary	4-405		Fee for making connection	1-726	
SERVICE OF NOTICE			Inspection of ventilation by Plumbing Inspector	1-727	
See NOTICES; PUBLICATION OF NOTICE			Letting of contracts	7-601, 7-602	
			Advertising for bids, when required	7-601	
			Lowest responsible bid accepted	7-601	
			Recording and signing by Commissioners	7-602	



<b>SEWERS—Continued</b>	<b>Sec.</b>	<b>SICK LEAVE</b>	<b>Sec.</b>
Letting of contracts—Continued		Fire Department	4-409
Right to reject bids	7-601	Metropolitan police force members	4-180
Splitting of contract to avoid calling for bids prohibited	7-601	Park police	4-207
Unanimous consent of Commissioners required	7-602	<b>SIDEWALKS</b>	
Maintenance and employee costs to be included in annual budget estimates	47-206	Alley dwellings, width of sidewalk	5-101
Making connection before street improved	7-605	Business streets, use for business purposes	7-1205, 8-108
Notice to make connections	6-402	Deposit of refuse or litter, power to prohibit	1-224
Given by Commissioners	6-402	For sale or rent sign, placing on sidewalk prohibited, penalty	7-1001
Nonresident owners	6-404	Obstructions, removal, duty of National Park Service	7-1207
Outside toilets, sewer connections	6-701—6-704	Permit system of improvement	7-608, 7-609
Permit system of improvement	7-608, 7-609	Application and deposit of half of estimated cost	7-608
Application and deposit of half of estimated cost	7-608	Assessments against property	7-608
Assessments against property	7-608	Collection of assessment	7-608
Collection of assessment	7-608	Discretion of Commissioners	7-608
Discretion of Commissioners	7-608	Lien of assessment	7-608
Lien of assessment	7-608	Notice given	7-608
Notice given	7-608	Objections and hearings	7-608
Objections and hearings	7-608	One-half of cost, assessment against property	7-608
One-half of cost, assessment against property	7-608	Payment of assessments, instalments, interest	7-608
Payment of assessments instalments, interest	7-608	Permit fund, distribution	7-608
Permit fund, distribution	7-608	Repayment from permit fund	7-608, 7-609
Repayment from permit fund	7-608, 7-609	Service connection with water-mains and sewers, assessment of cost	7-608
Service connection with water mains and sewers, assessment of cost	7-608	Public grounds, rules and regulations concerning, power to adopt	8-144
Regulations concerning, Commissioners' power to adopt	1-725	Request for improvement under permit system	7-608
Request for improvement under permit system	7-608	Snow and ice, removal	7-801—7-806
Retention of percentage of final payment due contractor	1-807	Ashes, temporary use	7-802—7-804
Deposit with treasurer of United States	1-807	Building owned or leased by United States	7-803
Interest, sum in excess of \$100	1-807	Commissioners removing at expense of owner or occupant	7-805, 7-806
Investments, discretion of treasurer	1-807	Fire limits of District	7-801
Period of retention	1-807	Owner or occupant failing to remove, removal by Commissioner, recovery of cost	7-805, 7-806
Sewage disposal plant, public works loan for construction	9-204	Owner's and occupants, duty to remove	7-801
Street improvements, service connections, assessment of cost	7-610	Penalty for failing to remove	7-806
Streets dedicated by landowners, right to lay in parking	7-117	Property owned or leased by District	7-802
<b>SHELLEY'S CASE</b>		Public buildings, squares and reservations	7-802
Rule, abolished	45-203	Sand, temporary use	7-802—7-804
<b>SHERBET</b>		Street improvement, assessment against abutting property	7-606
Standard measures and their capacity	10-119	Streets dedicated by landowners, right to lay on parking	7-117
<b>SHINGLE SHOPS</b>		Use of space under, rental	7-901
Licenses	47-2310	Vault under, rental	7-901
<b>SHOOTING GALLERIES</b>		<b>SIGHT-SEEING BUSES</b>	
License	47-2322	Authority of Commissioners of District	47-2331
Certificate of inspector of buildings	47-2322	Authority of Public Utilities Commission	47-2331
Fee	47-2322	Drivers	47-2331
Written consent of neighbors	47-2322	Badge	47-2331
Major and superintendent of police, duties	47-2322	License	47-2331
Prescribing caliber of firearms	47-2322	License	47-2331
Prescribing kind of cartridges	47-2322	Identification tags	47-2331
		Tax	47-2331



<b>SIGNATURE</b>	Sec.	<b>SMOKE PREVENTION—Continued</b>	Sec.
Notaries public required to file with clerk of District Court	1-506	Regulations, power of Commissioners to adopt	6-802
<b>SIGNATURE BY MARK</b>		Smoke consumers, regulations for installation and operation	6-802
Pay roll, witnesses	1-315	Violations, prosecution by information	6-803
<b>SIGNS</b>		<b>SMOKE SCREEN SERVICE</b>	
See <b>OUTDOOR SIGNS</b>		Use or possession of, penalty	40-610
Real estate for sale or rent, regulation, violation, penalty	7-1001	<b>SMOKESTACKS</b>	
<b>SILVER</b>		See <b>CHIMNEYS</b>	
Poisonous compounds, sale, restrictions	2-612	<b>SNOW AND ICE</b>	
<b>SKATING RINKS</b>		See <b>ICE</b> ; <b>SIDEWALKS</b>	
License fee	47-2302	Removal from sidewalk by owner or at owner's expense	7-801—7-806
Revocation of license for violation of decency regulations	47-2303	Streetcar company, duty to remove from tracks	7-614
<b>SLAUGHTERHOUSES</b>		<b>SOCIAL AGENCIES</b>	
License	47-2316	See <b>BOARD OF PUBLIC WELFARE</b>	
Approval of health officer	47-2316	Cooperation with Juvenile Court	11-931
Compliance with location laws	47-2316	Investigating adoption petitions	16-201
Fee	47-2316	<b>SOCIAL CLUBS</b>	
<b>SLEET</b>		Income tax, when exempted	47-1502
Removal from sidewalk by owner or at owner's expense	7-801—7-806	<b>SOCIAL SECURITY</b>	
<b>SLOT MACHINES</b>		See <b>BLIND PERSONS</b> ; <b>OLD-AGE ASSISTANCE</b> ; <b>UNEMPLOYMENT COMPENSATION</b>	
Food dispensing machine license	47-2319	Care of blind persons	46-101—46-116
Placard on machine, contents	10-109	Old-age assistance	46-201—46-215
Refreshment dispensing machine license	47-2319	Unemployment compensation act	46-301—46-324
Required to be in perfect working order	10-109	<b>SOCIETY OF THE CINCINNATI</b>	
Slug, operating with, penalty	22-1407	Property exempted from taxation	47-830
Use regulated	10-109	<b>SODA FOUNTAINS</b>	
Weighing machine license	47-2319	License	47-2327
<b>SLUGS</b>		<b>SOFT-DRINK ESTABLISHMENTS</b>	
Coin machine, operating with, penalty	22-1407	License	47-2327
Issuing	22-1408	<b>SOLDIERS AND SAILORS</b>	
Manufacturing	22-1408	Admission without tuition to District schools for special instruction	31-304
Possession	22-1408	Children of, admitted to schools	31-305
<b>SLUM CLEARANCE</b>		<b>SOLDIERS' HOME</b>	
See <b>ALLEY DWELLINGS</b>		Building and grounds exempted from taxation	47-801
Alley Dwelling Law	5-103—5-116	<b>SOLICITORS</b>	
<b>SMALL CLAIMS AND CONCILIATION</b>		See <b>ATTORNEYS</b>	
<b>BRANCH OF MUNICIPAL COURT</b>		Fees and costs	11-1501
See <b>MUNICIPAL COURT</b>		House to house	
<b>SMALL LOANS</b>		Bond	47-2337
See <b>PETTY LOANS</b>		Definition	47-2337
Small money lenders' law	26-601—26-611	License	47-2337
<b>SMALL MONEY LENDERS</b>		<b>SONS OF THE AMERICAN REVOLUTION</b>	
See <b>PAWNBROKERS</b>		Property exempted from taxation	47-827
<b>SMALLPOX</b>		<b>SOOTHSAYERS</b>	
Compulsory vaccination of school children	31-1102	See <b>FORTUNE TELLERS</b>	
Hospitals	32-306	<b>SOUTH DAKOTA AVENUE</b>	
<b>SMOKE PREVENTION</b>		Widening, use of land owned by United States authorized	7-126
Appropriations for enforcement of law	6-804	<b>SOUTH DAKOTA AVENUE BRIDGE</b>	
Budgeting of expenses under law	6-804	Street railways using, payment of share of cost	7-512
Discharge of dense smoke prohibited	6-801	<b>SPECIAL ASSESSMENT</b>	
Enforcement officers	6-804	See <b>STREETS AND OTHER WAYS</b>	
Penalty for violating law	6-803		
Persons liable for violation of law	6-801		



**SPECIAL COURT TERMS OF THE UNITED STATES DISTRICT COURT**

See UNITED STATES DISTRICT COURT

Absence of judge assigned to term	11-314
All cases heard at special term	11-313
Assignment of judges	11-312
Certification and transfer of cases among judges	11-314
Circuit Court term	11-311, 11-316—11-321
Criers, appointment	11-312
Criminal Court term	11-311, 11-322
Declared terms of United States District Court	11-313
District Court term	11-311, 11-324
Equity Court term	11-311, 11-325
Judgments, decrees, and sentences deemed those of United States District Court	11-313
Messengers, appointment	11-312
Number of judges sitting	11-310
Probate Court term	11-311
Regulation by general term	11-312
Writs, power to issue	11-315

**SPECIAL INDORSEMENT**

See NEGOTIABLE INSTRUMENTS

**SPECIAL POLICEMEN**

See CROSSING POLICEMEN; PARK POLICE; POLICE DEPARTMENT

Appointment to guard private property	4-115
Emergency appointments	4-133
Appointment without pay	4-133
Powers and duties	4-133
Riots, pestilence, invasion, or insurrection	4-133

**SPECIAL REMEDIES**

See ACCOUNTS AND ACCOUNTING; ADOPTION; ATTACHMENT AND GARNISHMENT; DIVORCE; EJECTMENT; EMINENT DOMAIN; GAMBLING AND GAMING TRANSACTIONS; HABEAS CORPUS; JOINT CONTRACTS; MANDAMUS; NAMES; NEGLIGENCE CAUSING DEATH; PARTITION; PAYMENT OF MONEY INTO COURT; QUIETING TITLE OBTAINED BY ADVERSE POSSESSION; QUO WARRANTO; REFERENCE OF QUESTIONS OF LAW AND FACT; REPLEVIN; SET-OFF; SURETIES

**SPEEDING**

Criminal offense	40-605
------------------	--------

**SPEEDWAY**

Construction in Potomac Park, authorization by Congress required	8-155
--	-------

**SPINACH**

Sale by net weight authorized	10-115
-------------------------------	--------

**SPIRES**

Height, fireproof construction	5-404, 5-405
--------------------------------	--------------

**SPIRIT OF WINE**

Definition of "alcohol" includes	25-103
----------------------------------	--------

**SPIRITS**

Definition	25-103
------------	--------

**SQUARES**

Business enterprise covering two-thirds of area, closing of alleys	7-305
--	-------

**SQUARES—Continued**

Closing and changing of alleyways on petition of property owners	7-306
Closing of alleys and minor streets, square owned by one person, tenants in common, or partners	7-308
Encroachments, duty of Secretary of Interior to prevent, property belonging to United States	7-1209
612 made part of park system	8-124
613 made part of park system	8-124
1093, closing of alleys authorized	7-123 note
1107, closing of alleys authorized	7-123 note
1307, closing of alleys authorized	7-123 note
1311, closing of alleys in part authorized	7-123 note

**STABLES**

Sewer connections	6-401
-------------------	-------

**STAIRWAYS**

See FIRE ESCAPES AND SAFETY PROVISIONS

Failure to provide lights, penalty	5-308
Fireproof door	5-305
Fire resisting stairways	

Buildings in which required	5-301, 5-302
-----------------------------	--------------

Buildings used for stores and offices purposes	5-302
--	-------

Dimensions	5-301, 5-302
------------	--------------

Stairway lights	5-303
-----------------	-------

Fire resisting stairways in certain buildings	5-301
---	-------

Fire resisting doors required	5-301
-------------------------------	-------

Obstruction prohibited	5-306
------------------------	-------

**STANDPIPES**

Definition	5-312
Failure to provide after notice, penalty	5-308
Installing in buildings, when required	5-303

**STATES**

Acts of notary of District, legality	1-510
--------------------------------------	-------

**STATISTICS**

See VITAL STATISTICS

**STATUTE OF FRAUDS**

See SALES, UNIFORM ACT

Contracts for sale of goods	12-304
Accepting partial delivery, effect	12-304
In writing, effect	12-304
Less than \$50.00	12-304
Part payment, effect	12-304
Void, when	12-304
Contracts made void	
Conveyance in trust	12-303
Trust property	12-303
Contracts made voidable	12-302
Debt or default of another	12-302
In consideration of marriage	12-302
Not to be performed within year	12-302
Sale of goods, when	12-304
Sale of land	12-302
Contracts required to be in writing	12-302
Conveyance of trusts	12-303
Debt or default of another	12-302
In consideration of marriage	12-302
Not to be performed within year	12-302
Sale of land	12-302
Trust property	12-303



STATUTE OF FRAUDS—Continued		Sec.	STOLEN PROPERTY—Continued		Sec.
Endorsement of payments on written prom- ises, effect		12-305	Property clerk made custodian		4-152
Estates by sufferance		12-301	Record kept of property, contents		4-153
Estates created by other than deeds, effect		12-301	Receiving	22-2205, 22-2207	
Estates created by parole, effect		12-301	District, property of, penalty		22-2207
Infant, new promise after reaching majority		12-306	Penalty		22-2205
Ratification by conduct		12-306	Second-hand dealers, purchasing, revocation of license		47-2339
Written acknowledgment		12-306	STONES		
New promise on simple contracts		12-305	Throwing in streets, penalty		22-1109
By a joint contractor, effect		12-305	STORAGE		
By a joint executor or administrator		12-305	Licenses	47-2313—47-2315	
Part payment, effect		12-305	STORES		
Writing necessary to avoid limitation		12-305	See FIRE ESCAPES AND SAFETY PROVISIONS		
Trusts implied in law, exception		12-303	STREET LIGHTING		
Under Uniform Sales Act		28-1104	Adoption of lighting method		7-701
STATUTE OF JEOFAIL			Contract for gas or electric lights not required		7-704
See PLEADINGS			Design and quality of equipment, approval by Commissioners		7-701
STATUTE OF LIMITATIONS			Discontinuance of lamps on orders of Com- mission		7-701
See LIMITATION OF ACTIONS			Electric light, schedule of rates		7-701
STATUTE OF USES			Erection of lamp		7-701
Provisions	45-1201		Facilities for testing amount of illumination furnished, duty of companies to provide		7-703
STEAM AND OTHER OPERATING ENGI- NEERS			Failure to furnish and set up equipment, pen- alty		7-705
Application for license	2-1503		Failure to furnish required illumination, de- ductions from charges		7-703
Certificate of good moral character	2-1503		Flat-flame burner, rate per lamp		7-701
Made in writing	2-1503		Gas mains, extension for street lights		7-706
Qualifications of applicant	2-1503		Installation of equipment by companies		7-701
Board of Examiners	2-1502		Lamp posts and incidentals, maximum cost		7-701
Appointive members, appointment by			Cost in excess of maximum increase in rate allowance		7-701
Commissioners	2-1502		Lamps not burning, deductions from amount of bill		7-703
Boiler inspector ex officio member	2-1502		Mantle gas lamp, schedule of rates		7-701
Compensation of appointive members	2-1502		Number of lights, power to increase		7-710
Members of board	2-1502		Overhead wires prohibited		7-702
Reappointment of member	2-1502		Purchase or construction of equipment by Commissioners, condition		7-701
Removal for misconduct or incompetency	2-1502		Railroads, payment for light		7-709
Term of office	2-1502		Enforcing payment		7-709
Vacancies filled for unexpired term	2-1502		Regulation of hours by Commissioner		7-707
Employment of unlicensed operator, penalty, gravity boilers excepted	2-1506		Removal and readjustment of lamps, sched- ule of charges		7-701
Engineers employed by United States Gov- ernment or licensed by other states ex- cepted	2-1507		Removal of fixtures on orders of commission		7-701
Examinations for license	2-1502		Schedule of rates		7-701
Fee for license	2-1504		Washington Terminal Company		7-708
Intoxication, suspension or revocation of li- cense	2-1504		Enforcing payment for street light charges		7-708
First and subsequent offenses	2-1505		Payment for street lights, maximum charges		7-708
Licensing required	2-1501		STREET ORATORS		
Testing of boilers	2-1502		Speaking on Capitol grounds prohibited		9-110
STEAM BOILERS			STREET RAILWAYS		
See BOILER INSPECTION			See PUBLIC UTILITIES		
STEAMSHIP LINES			Annual report to Congress, contents	44-215	
Employers' Liability Act	44-401—44-405		Benning Bridge, use, share of cost, payment	7-514	
STOLEN PROPERTY			Bridges, excess cost of construction or main- tenance, payment	7-604 note	
See EMBEZZLEMENT					
Destroying, penalty	22-2208				
Police Department records, open to public in- spection	4-135				
Police registry book	4-134				



STREET RAILWAYS—Continued		Sec.	STREET RAILWAYS—Continued		Sec.
Calvert Street Bridge, use, conditions		7-524	Transfers		44-207
Cars, endangering passage of, penalty		22-3119	Free transfers when joint use of tracks is denied		44-212
Cedar Street Underpass, use, payment of share of cost		7-519	Issuance		44-207
Competitive streetcar and bus lines		44-201	Misuse, penalty		44-207
Certificate of convenience and necessity required		44-201	Prosecutions for misuse		44-203
Jurisdiction of Public Utilities Commission		44-201	Reciprocal agreements required		44-208
Connecticut Avenue Bridge over Klinge Valley, use, conditions		7-513	Underground tracks, reciprocal trackage agreements permitted only where motive power is identical		44-210
Constructing in street, consent of Congress		7-1203	Van Buren Street Underpass, use, payment of share of cost		7-517
Definition		43-109	Violation of service requirements, penalty		44-202
Duct lines, construction authorized		44-206	STREETS		
Easement over Michigan Avenue		7-131	See HIGHWAYS; STREETS AND OTHER WAYS		
Eastern Avenue Viaduct, use by street railway, payment of share of cost		7-515	STREETS AND OTHER WAYS		
Employers' liability act		44-401—44-405	See ABUTTING OWNERS; ALLEY DWELLINGS; EMINENT DOMAIN; PARKS AND PLAYGROUNDS; STREET LIGHTING		
Excise tax on companies		47-1701	Abandonment	7-113, 7-114, 7-118, 7-123	
Exemption from Boiler Inspection Act		1-709	Assessment of damages		7-114
Failure to supply glass vestibules for motormen, penalty		44-205	Closing of various streets and highways authorized		7-123
Fenders required on streetcars		44-204	Consent of property owners		7-123
Francis Scott Key Bridge, use, conditions		7-511	Maintenance pending actual abandonment		7-114
Free transportation of policemen and firemen		44-213	Power to change existing subdivisions not conferred		7-113
Glass vestibules for motormen required		44-205	Providing grounds for educational, religious, or similar institutions		7-113
Joint use of underground tracks permitted only where motive power is identical		44-210	Reversion to abutting owners, abandonment under permanent highway plan		7-118
Michigan Avenue Viaduct, use, payment of share of cost		7-520	Alley dwellings, width of roadway		5-101
Monroe Street Viaduct, use, conditions		7-510	Alleys		
Paving between tracks		7-624	Closing in squares 1107 and 1307, and in part in squares 1093 and 1311 authorized		7-123 note
Liability for cost		7-604 note	Eminent domain, opening, widening, or straightening alleys or minor streets		7-313—7-333
Power, equipment, appliance and service requirements		44-202	Existing alleys, legalizing act		7-328
Public Utilities Commission, power on services		44-202	Land owned by district		7-309—7-312
Rails, type required specified		44-209	Laying out in building lots subdivision		1-620
Reciprocal trackage agreements required		44-208	Police regulations, powers of Commissioners		1-623
Reduced fares for school children		44-214	Previously closed by subdivision, legalizing act		7-329
Removal of disused tracks		44-211	Alleys and minor streets		7-301
Commissioners of District may order		44-211	Commissioners, authority to open, extend, widen, or straighten, conditions		7-301
Failure to remove, penalty		44-211	Health officer certifying necessity of opening, extending, widening, or straightening		7-301
Rules and regulations on services		44-202	Petition to open, extend, widen, or straighten		7-301
Service requirements, prosecution of violations		44-203	Allotment for improvement, unexpended balances, carrying over into succeeding year		7-619
Snow and ice, removal from track		7-614	Appropriations, exceeding prohibited		7-620
Failure to remove, Commissioners removing, assessment of cost against company		7-614	Around the Capitol		47-1107
South Dakota Avenue Bridge, use, conditions		7-512	Improvements		47-1107
Street improvement assessments and costs		7-611, 7-612	Private property assessments		47-1107
Street intersections		4-112, 4-113	Secretary of Interior assessing and collecting for improvements		47-1107
Bringing car to full stop required		4-112			
Crossing policemen		4-112, 4-113			
Failure to bring car to stop, penalty		4-112			
"Street railroad corporation" defined		43-110			
Sufficient cars to be provided		44-202			
Track repairs, repairing or replacing pavement, payment of cost		7-604 note			



STREETS AND OTHER WAYS—Continued		Sec.	STREETS AND OTHER WAYS—Continued		Sec.
Baltimore and Ohio Railroad Company, construction and expansion of tracks		7-1212	Closing and readjustment of streets—Con.		
Baltimore and Potomac Railroad Company, siding and switches, power to construct		7-1210, 7-1211	Condemnation proceedings, objections filed		7-405—7-407
Barbed-wire fences, construction or maintenance, restriction, penalties		7-1101—7-1105	Dedication in connection with closing		7-403
Beatty and Hawkins's addition to Georgetown, inclusion in permanent highway plan		7-116	Dismissal of proceedings by Commissioners, after verdict		7-407
Building lines		5-201—5-206	Existing laws unrepealed		7-409
Building or street materials, injuries to, penalty		22-3113	Hearing, notice given		7-402
Buildings, height governed by width and character of street		5-405	Name of act		7-410
Basis of measurement		5-407	Notice of intention given		7-402
Business streets		7-1205, 8-108	Notice of order closing, publication		7-404
Designation by Commissioners		7-1205, 8-108	Objections filed, assessment of benefits and damages		7-405
Use of sidewalk for business purposes		7-1205	Payment of damage awards		7-406
Canal Street, buildings fronting, approval of plan by Fine Arts Commission		7-1219	Petitions by property-owners for closing		7-408
Cemeteries, rights of way through		1-615	Plats, contents		7-403
Change in names		7-106, 7-107	Recording of order and plats		7-404
Abbey Place		7-107 note	Reference to National Capital Park and Planning Commission for recommendation		7-401
Avenue of the Presidents		7-107 note	Reverting of title to abutting owners		7-401
Cathedral Avenue		7-107 note	Service of order on property-owners		7-404
Chevy Chase Parkway		7-107 note	Time allowed for objecting to order		7-404
Commissioners' right to name or rename streets and highways		7-107	Title to land in United States, Commissioners authorized to dispose of		7-401
Commodore Barney Circle		7-107 note	Closing, municipal center, streets and alleys		9-201
Fairlawn Avenue		7-107 note	Closing of alleys and minor streets		7-302—7-309
Fifteenth Street		7-107 note	Acceptance of dedication of new alleys, closing of old alleys		7-303
Greenwich Parkway		7-107 note	Alley less than ten feet in width, application of abutting owners		7-304
Logan Circle		7-107 note	Alley not an original alley, reversion of title to abutting owners		7-302
Maine Avenue		7-107 note	Alley rendered useless by opening of other ways		7-302
Military Road		7-107 note	Application of property-owners		7-303
Montgomery Blair Portal		7-107 note	Assessment of benefits against reverting lands		7-302
Mozart Place		7-107 note	Business enterprise covering two-thirds of square		7-308
Oregon and Concord Avenues		7-107 note	District acquiring lands for municipal purposes, property-owner's right of access preserved		7-309
Oregon Avenue		7-107 note	Future ownership of alleys closed by dedication of other ways		7-303
Park Road		7-107 note	Original alley, sale of land		7-302
Swann Street		7-107 note	Square owned by one person, tenants in common, or partners		7-308
Two streets with same name		7-106	Improvement		7-305
Walbridge Place		7-107 note	Use of square for purpose of some business enterprise		7-305
Williamsburg Lane		7-107 note	Closing of certain streets authorized		7-123, 7-124
Cleaning and sweeping		1-235, 1-236	Apportionment of property among abutting owners		7-124
Declared necessary municipal objects		1-235	Assessment for taxation		7-124
Payment of costs		1-235	Plat, preparation and approval		7-124
Sale of street sweepings authorized		1-236	Reversion of title to abutting owners		7-123
Closing alleys		7-302—7-309	Commissioners of District, control over		7-101
Closing and changing of alleyways on petition of property owners		7-306, 7-307	Conduit Road, jurisdiction and control vested in Commissioner		7-1201
All owners of all or part of square petitioning for closing		7-306	Curbing, assessment against abutting property		7-606
Approval of petition by Commissioners		7-306	Curbings, replacement cost, exemption from assessment		7-626
Dedication of new alleyways		7-306	Dedication by plat		1-614
Filing of plat		7-306			
Future ownership of closed alleys		7-306, 7-307			
Recording of copy of order		7-307			
Closing and readjustment of streets		7-401—7-410			
Authority vested in Commissioners		7-401			
Collection of benefit assessments		7-406			
Compensation of abutting owners for land or structures		7-401			



STREETS AND OTHER WAYS—Continued		Sec.
Dedication by property-owners	7-117	
Acceptance by Commissioners	7-117	
Building restriction lines	7-117	
Sewers and water-mains, right to lay through parking	7-117	
Sidewalks, right to lay on parking	7-117	
Space between street lines and building restriction lines, use	7-117	
Width of streets	7-117	
Deposit of refuse or litter in streets, power to prohibit	1-224	
District owning land	7-309—7-312	
Closing alleys, conditions	7-309	
Hearing afforded property-owners, closing or opening of alleys	7-311	
Maps, preparation and recordation, opening and closing of alleys	7-312	
Notice given, opening or closing of alleys	7-311	
Setting aside land for new alleys	7-310	
Disturbing or removing public works or material, permit required	7-615	
Penalty for violating act	7-616	
Dogs, urging to fight in streets	22-1110	
Drinking in, penalty	25-128	
Eminent domain	7-201—7-221	
Dismissal of action, damages exceeding benefits	7-219	
Land for streets	7-201—7-221	
Street extensions, cost and expenses assessed as benefits	7-218	
Encroachments, duty of Secretary of Interior to prevent	7-1209	
Excavations, permit, fee	1-726	
Gas main		
Laying before street improved	7-605	
Laying, permit, replacing street	7-1204	
Grounds for educational, religious, or similar institutions	7-113	
Gutters, replacement cost, exemption from assessment	7-626	
Ice		
Removal from sidewalk	7-801—7-806	
Removal from track by streetcar company	7-614	
Improvement, annual schedule arranged by Commissioners	7-607	
Lighting of streets	7-701—7-710	
Maintenance, payment of cost	7-611	
Materials for making or repairing, condemnation	7-332	
Michigan Avenue	7-127, 7-129—7-131	
Abandonment of certain portion	7-129	
Apportionment of abandoned part	7-129	
Extension and widening authorized	7-127 note	
Plat showing relocation, preparation and recordation	7-130	
Relocation in part authorized	7-127	
Street railway company given easement	7-131	
Milestones, removing, penalty	22-3106	
"Minor street" defined	7-301	
Montrose Park, partial transfer for highway purposes	7-1201 note	
Motor fuel tax		
Effect of	47-1917	
Proceeds, use of for	47-1901	

STREETS AND OTHER WAYS—Continued		Sec.
Names	7-106, 7-107, 7-112	
Permanent highway plan adopted, powers of Commissioners	7-112	
Streets outside city limits	7-107	
Streets with same name, change	7-106	
Naval Observatory grounds	7-120, 7-121	
Massachusetts Avenue	7-121	
Restrictions on construction	7-120	
Obstructing, penalty	22-3120, 22-3121	
Fines collected in name of United States	22-3121	
Obstructions, removal	7-1204, 7-1207	
Penalty, cost of removal, payment	7-1204	
Suits for removal, prosecution by District Attorneys	7-1207	
Parkings, control vested in Commissioners	8-110	
Parks, setting aside part of street for park purposes	7-1206	
Paving and repairing	7-601, 7-604	
Advertisement for proposals, when required	7-601	
Apportionment of costs	7-604	
Best material, use required	7-603	
Bond of contractor	7-603	
Intersections, apportionment of cost	7-604	
Letting of contract to lowest responsible bidder	7-601	
Liability of contractor for defects and repairs	7-603	
Paving between tracks of street railways, apportionment of costs	7-604 note	
Payment of cost	7-604	
Property owned by street railways, payment of assessments	7-604 note	
Recording and signing of contracts by Commissioners	7-602	
Retention of cash to guarantee repairs not required	7-603	
Right to reject any and all bids	7-601	
Splitting of contract so as to avoid advertising for bids prohibited	7-601	
Streetcar companies, track repairs, paving repairs, and replacements, payment for	7-604 note	
Unanimous consent of Commissioners required	7-602	
Paving or completely resurfacing	7-611, 7-612, 7-617, 7-619, 7-622—7-634	
Adjustment of assessment by Commissioners	7-631	
Area included	7-612	
Assessment levied obtained, exemptions from replacement assessment	7-626	
Assessment of cost against abutting property	7-611, 7-622	
Bituminous macadam, use authorized	7-617	
Cancellation of prior assessment	7-632	
Collection of assessments, law governing	7-630	
Constitutionality of 1931 Act, provision separable	7-633	
Curbs, assessment of cost	7-623	
Delinquent assessments, interest	7-630	
Depth to which land assessed, undivided land	7-625	



STREETS AND OTHER WAYS—Continued	Sec.
Paving or completely resurfacing—Continued	
Division of cost between property on each side of street	7-612
Exceptions from assessment of cost against abutting owners	7-612, 7-624
Exemptions from reassessments made inapplicable, original improvement made prior to 1885	7-634
Front foot assessment, limitation on amount	7-625
Front foot rule of assessment	7-611, 7-622
Gutters, assessment of cost	7-623
Heater method used, payment of costs	7-628
Improving under appropriations made by Congress	7-611, 7-622
Interest on assessment	7-630
Intersection	7-611, 7-624
Notice of intention, roadway improvement excepted	7-612
One-half of street only improved	7-624
One side only improved, assessment of costs	7-622
Owner constructing original pavement under permit, exemption from assessments inapplicable, improvement made prior to 1885	7-634
Philadelphia, Baltimore and Washington Railroad Company, cost of paving between tracks, payment	7-1222
Prior improvement made at owner's cost, exemption from assessment	7-627
Property abutting on two or more streets	
Limitation on aggregate assessment	7-629
Limitation on assessment, exemption inapplicable, improvement made prior to 1885	7-634
Protests against assessment	7-631
Reassessment of cost of improvement made under prior laws	7-632
Refund of assessments paid under prior laws	7-632
Replacement exemption inapplicable, assessment levied prior to 1885	7-634
"Roadway" defined	7-623
Streetcar tracks in street	7-611
Street railways, paving between tracks	7-624
Time limit for protesting assessment	7-631
Total assessment limited	7-625
Unexpended allotment made available for succeeding year	7-619
Unsubdivided property, computation of assessment	7-625
Width of improvement assessed against adjoining property	7-624
Width of pavement	7-613
Pennsylvania Railroad Company, switches and sidings	7-1225—7-1229
Permanent Highway Plan	7-108—7-112
Eminent domain authorized, procedure, law governing	7-201—7-221
New plans, adoption by Commissioners, approval	7-122
New plans for various streets	7-122 note

STREETS AND OTHER WAYS—Continued	Sec.
Permit system of improvement	7-608, 7-609
Application and deposit of half of estimated cost	7-608
Assessments against property	7-608
Bituminous macadam, use authorized	7-617
Collection of assessment	7-608
Discretion of Commissioners	7-608
Lien of assessment	7-608
Notice of assessment	7-608
Objections and hearings	7-608
One-half of cost, assessment against property	7-608
Payment of assessments, installments, interest	7-608
Permit fund, distribution	7-608
Repaving, exemption from assessment	7-627
Repayment from permit fund	7-608, 7-609
Service connections with water mains and sewers, assessment of cost	7-608
Width of pavement of street	7-613
Playing in streets, penalty	22-1108
Portable asphalt plant, use in improving streets authorized	7-618
Protest against improvement assessment	7-631
Public work, performing under authority of United States, failure to replace street, penalty	7-1208
Railroads prohibited in certain streets	7-1202
Readjustment	7-113
Approval of plat by National Capital Park and Planning Commission	7-113
Grounds for educational, religious, or similar institutions	7-113
Power to change existing subdivisions not conferred	7-113
Recording of plat	7-113
Repairs	7-611, 7-621
Contract for repairing pavements, maximum duration	7-621
Payment of cost	7-611
Request for improvement under permit system	7-608
Resubdivision of property, permanent highway plan adopted	7-119
Resurfacing by heater method	7-628, 7-634
Exemption from assessment inapplicable, improvement made prior to 1885	7-634
Payment of cost	7-628
Retention of percentage of final payment of contractor	1-807
Interest, sum in excess of \$100	1-807
Investments, discretion of United States Treasurer	1-807
Period for which retained	1-807
Purposes for which retained	1-807
Sale of lands in which United States interested, disposition of proceeds	7-330
Service pipes, laying before street improved	7-605
Sewer connections	7-605, 7-610
Assessment of cost	7-610
Making before street improved	7-605
Sidewalks, improvement of streets, assessment against abutting property	7-606
Small parks at street intersection, part of park system	8-111



STREETS AND OTHER WAYS—Continued		Sec.	SUBDIVISIONS—Continued		Sec.
Snow			Records of, surveyor's office		1-605
Removal from sidewalk	7-801—7-806		Regulatory powers of Commissioners		1-613
Removal from track by streetcar company	7-614		Resubdivision of property affected by Permanent Highway Plan		7-119
Street parking, control by Commissioner	5-205		Resurvey to determine accuracy		1-621
Regulations for care and preservation	5-205		Certification by surveyor		1-621
Street railroad, laying in street, consent of Congress	7-1203		Recording, order for by Commissioners required		1-621
Street trades, child labor	36-217—36-224		Scale of plats		1-610
Subdivisions outside city of Washington, approval by Commissioners, recording with Surveyor	7-125		Squares or lots belonging to United States		1-612
Throwing stones in streets, penalty	22-1109		<b>SUBORNATION OF PERJURY</b>		
Trenches, cutting in, permit required	7-616		See <b>PERJURY</b>		
Penalty for violating act	7-616		Definition, penalty		22-2501
United States Soldiers' Home, vacation of part of grounds authorized	7-127, 7-128		Indictment, sufficiency of		23-205
Water mains	7-605, 7-610		<b>SUBPOENAS</b>		
Laying before improvement of street	7-605		Police Department members, civil cases, exemption while on duty		4-128
Service connection, assessment of cost	7-610		<b>SUBROGATION</b>		
Water Street, closing for park purposes	8-114		Payer of bill for honor		28-951
Widening of certain streets, use of land owned by United States authorized	7-126		<b>SUGGESTION OF DEATH</b>		
Width of pavement	7-613		See <b>ABATEMENT AND REVIVOR</b>		
<b>STREET SWEEPINGS</b>			<b>SUIT MONEY</b>		
Burning in incinerator	6-506		In divorce		16-410
<b>STREET VENDORS</b>			<b>SUMMONS</b>		
Commissioners' power to regulate	1-224		See <b>PROCESS</b>		
<b>STRIKES</b>			Juvenile Court		11-909, 11-910
Firemen prohibited from engaging in	4-407		Probate Court		11-506—11-508, 11-514
Police, membership in organizations advocating prohibited	4-125		Failure of fiduciary to appear, attachment and sequestration of property		11-506
<b>STRUCK JURY</b>			Failure to make return		11-507
Civil cases, United States District Court	11-319		Failure to serve process		11-507
<b>SUBDIVISIONS</b>			Fiduciaries, power of court to compel performance of duties		11-514
Approval by Commissioners	1-613		Power to issue		11-506
Boundaries marked by surveyor	1-619		Return		11-508
Building lots plat	1-620		Service		11-507
Certification by surveyor and witnesses	1-620		Witness refusing to testify, punishment		11-506
Preparation by surveyor	1-620		Service on institutions of learning		29-412
Certificate describing dimensions of boundaries	1-619		<b>SUNDAY</b>		
Certification of plat by surveyor, owner and witnesses	1-618		Enforcement of Sunday observance laws by Commissioners		4-119
Changing of boundaries	1-618		Fire Department members, leaves of absence		4-410
Certification by surveyor, owner, and witnesses	1-618		Last day for doing act, falling on Sunday		28-101
Deficiency or excess in number of feet in lot or lots	1-624		Negotiable instruments falling due on, date payable		28-616
Apportionment, method	1-624		Police, leaves of absence		4-180
Description of property in deeds and other documents, reference to plats	1-622		Service of process on Sunday		13-102
Description of property in will or deed	7-110		<b>SUPERINTENDENT</b>		
Eminent domain, streets through unsubdivided part of plat	7-216, 7-217		See <b>WEIGHTS, MEASURES, AND MARKETS</b>		
Land outside limits of city of Washington	7-125		Weights, measures, and markets		10-101—10-103
Approval of plan by Commissioners of District	7-125		<b>SUPERINTENDENT OF DOCUMENTS</b>		
Recording of plan with surveyor	7-125		Distribution of the D. C. Code		49-104, 49-106
Metropolitan Police District	4-102		<b>SUPERINTENDENT OF INSURANCE</b>		
Permanent Highway Plan	7-109		See <b>INSURANCE AND INSURANCE COMPANIES</b>		
Adoption of subdivision by reference in will or deed	7-110		<b>SUPERINTENDENT OF MACHINERY</b>		
			Fire Department		4-404
			Salary		4-405



**SUPERINTENDENT OF POLICE**See **POLICE DEPARTMENT**

Advances to by disbursing officer 47-114  
 Bond 4-109  
 Dental law, enforcement, duties 2-305  
 Duty of force to respect and obey 4-126  
 Firearms

Report of sales to 47-2340  
 Shooting galleries, prescribing caliber for 47-2322

Healing Arts Practice Act, duty to enforce 2-137

Healing arts practitioner, petition for revocation of license 2-123

Healing arts, unlawful practice, petition to enjoin 2-132

Licenses requiring approval

Auctioneer 47-2309  
 Billiard parlors 47-2321  
 Bowling alleys 47-2321  
 Deadly weapons, dealers in 47-2340  
 Detective agencies 47-2341  
 Firearms, dealers in 47-2340  
 Guides 47-2338  
 Massage establishments 47-2311  
 Medicated bath establishments 47-2311  
 Pool halls 47-2321  
 Private detectives 47-2341  
 Russian bath establishments 47-2311  
 Turkish baths 47-2311

Nurses, petition for revocation or suspension of certificate 2-407

Oaths, power to take and administer 4-123

Office created 4-106

Persons and property seized in raids, duties 4-146

Pharmacists' licenses, investigation as to revocability 2-605

Pharmacy Law, duty to enforce 2-617

Podiatry Law, investigations and prosecutions, duties 2-704

Powers and duties 4-106

Preferring of charges against members of board 4-121

Quarterly reports to Commissioners, contents 4-127

Salary 4-108

Shooting galleries, prescribing cartridges for 47-2322

**SUPERINTENDENT OF PUBLIC SCHOOLS**See **EDUCATION**

Ex officio member of Healing Arts Licensure Commission 2-103

**SUPERSEDEAS**

Healing arts licensee, conviction of felony, appeal, affect 2-131

**SUPREME COURT OF UNITED STATES**

Appeals from public utilities commission orders 43-705

"Mandate" defined, review of decisions of Board of Tax Appeals 47-2404

Review of Decisions of Board of Tax Appeals 47-2404

Superior Court of District 11-101

**SURETIES**

Bonds and undertakings in District Court 28-2403

Bonds in penal sum with avoidance condition, limit of liability 28-2405

Sec.

**SURETIES—Continued**

Sec.

Commissioners becoming surety on bond given District prohibited 1-210  
 Petition for counter security, effect 16-2001  
 Petition to be relieved from suretyship, effect 16-2001  
 Surety paying  
 Subrogation against other sureties 16-2002  
 Subrogation against principal 16-2002

**SURGERY**See **HEALING ARTS PRACTICE ACT; PHYSICIANS AND SURGEONS**

Podiatry license examination 2-705

**SURVEYORS**

Abandonment or readjustment of streets, recording of plats 7-113

Alleys

Laying out 1-620

Police regulations, powers of Commissioners 1-623

Shown on plats, dedication 1-614

Appointment 1-601

Assistant surveyor 1-603, 1-604

Appointment by Commissioner, recommendation of surveyor 1-603

Duties 1-604

Oath of office 1-604

Avenues shown on plats, dedication 1-614

Building lot plats, preparation 1-620

Certification of plat and surveys 1-616

Charts, preservation 1-606

Closing of streets and ways, preparation of plat 7-124

Custodian of record of plats and subdivisions 1-605, 1-606

Deficiency or excess in number of feet in lot or lots, apportionment 1-624

Designations of property for assessments and taxation, duties 47-401-47-408

Employees 1-603

Fees

Commissioners authorized to prescribe 1-629

Paid to collector of taxes 1-616

Payable into Treasury 47-126

Posting of schedule in office 1-629

Transmitted to Treasury of United States 1-616

Field notes, preservation 1-616

Houses, adjustment of line of front to line of street 1-628

Indexing of records, maps, and charts 1-607

Instruments, preservation 1-606

Labeling of maps, charts, plans, and other drawings 1-607

Legal office of record of plats and subdivisions 1-605

Lines of subdivisions of squares shown on plats 1-610

Maps, preservation 1-606

Michigan Avenue, plat of abandoned and re-located portions 7-130

Oath of office 1-602

Deposited with Commissioners of District 1-602

Order of survey, execution 1-617

Return of true plat duly certified 1-617



SURVEYORS—Continued		Sec.	SWIMMING POOLS		Sec.
Party-walls	1-625—1-628		Indoors, license		47-2324
Certificate of location, admissibility and evidence		1-628	Outdoors, license		47-2324
Certification and recording of location		1-627	SWITCHES AND BRANCH TRACKS		
Location by surveyor		1-628	Baltimore and Potomac Railroad Company		
Payment for ground occupied	1-625, 1-626		7-1210, 7-1211		
Wall extending over line less than 7 inches		1-625	SYNDICATES		
Wall extending over line more than 7 inches		1-626	Included in definition of "partnership" under income tax law		
Permanent highway plan			47-1543		
Entry on property for purposes of survey	7-111		TAKOMA PARK		
Recorded with	7-109		Branch library		
Plats of squares and lots belonging to United States		1-612	37-107, 37-108		
Recorded by surveyor		1-612	TARGETS		
Preservation of maps, charts, surveys, and records	1-605, 1-606		Use of animals as, prohibited		
Private property, legal office of record		1-605	47-2343		
Record rule		1-606	Use of persons as, prohibited		
Records of divisions of squares and lots		1-607	47-2343		
Records property of District		1-608	TAXATION AND FISCAL AFFAIRS		
Regulatory powers of Commissioners over plats and subdivisions		1-613	See ASSESSMENT; ASSESSOR; BUDGETS; ESTATE TAX; INCOME TAXES; INHERITANCE TAX; MOTOR FUEL TAX		
Salary		1-601	Abattoir license		
Scale of plats and subdivisions		1-610	47-2316		
Streets shown on plats, dedication		1-614	Accounting for contingent expense appropriations		
Subdivisions outside city of Washington, recording of plan		7-125	47-107		
Surveys for District		1-616	Advance of funds by Secretary of Treasury on requisition of Commissioners of District		
Executed without charge		1-616	47-2412		
Surveys for private owners	1-618—1-622		Amusement park grounds license		
Alteration of boundaries of subdivisions or tracts		1-618	47-2323		
Certificates describing dimensions of boundaries		1-619	Anticipation by Commissioners prohibited		
Certification		1-618	1-219		
Certification of building lots, plats		1-620	Antideficiency Act made applicable to District		
Changes in surveys		1-618	47-105		
Execution of order for survey		1-617	Apartment house license		
Marking of boundaries		1-619	47-2329		
Planning of building lots		1-620	Apothecary license		
Recording of resurvey, order for by Commissioners		1-621	47-2308		
Resurvey to determine accuracy		1-621	Apportionment of appropriations to prevent deficits		
Subdivision of tract or parcel of land		1-618	47-106		
Witnesses		1-618	Appropriations and revenue funds		
Term of office		1-601	47-310		
Transcript of records, prima facie evidence		1-611	Deposit with Treasury		
Transfer of records to successor in office	1-608, 1-616		47-310		
Typewritten records authorized		1-609	Monthly audit of disbursements		
Under direction and control of Commissioner		1-601	47-310		
SUSPENSION OF LICENSES			Requisition and disbursement not to exceed		
See LICENSES			47-310		
Cosmetologist's license or certificate		2-1304	Requisition by Treasurer		
Dentist's license to practice		2-311, 2-312	47-310		
License to practice Healing Arts		2-123	Requisitions Commissioners of the District		
Conviction of felony, appeal, effect		2-131	47-310		
Plumber's licenses, ground		2-1405	Appropriations, permanent		
Veterinarians		2-810	47-108—47-110		
SWANN STREET			Assessments		
Oregon Avenue, name changed		7-107 note	Collection and disbursement		
			47-301—47-311		
			Designation of property for		
			47-401—47-408		
			Expenses to be included in budget estimates		
			47-209		
			Motor vehicles		
			47-1210		
			Not to be enjoined		
			47-2410		
			Personal property		
			47-1201—47-1214		
			Real property		
			47-701—47-723		
			Service sewers		
			43-1510—43-1517		
			Special		
			47-1101—47-1107		
			Statement of total		
			47-601		
			Water mains		
			43-1510—43-1518		
			Assessor		
			47-601—47-606		
			Athletic exhibition grounds license		
			47-2323		
			Auctioneer licenses		
			47-2309		
			Auditor		
			47-120—47-123		
			Auditing all accounts, exceptions		
			47-123		
			Bond		
			47-120		
			Chief clerk of auditor's office		
			47-122		
			Bond		
			47-122		
			Duties		
			47-122		



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Auditor—Continued			Board of assistant assessors—Continued		
Claims against "outstanding liabilities"			Reassessment where prior assessment is		
account		47-125	voided		47-712
Countersigning checks		47-121	Reducing assessment when improvements		
Duties		47-120	are damaged or destroyed		47-710
Authority to appropriate for District expenses		47-134	Replacement of members		47-604
Automobile rental agency license		47-2332	Subpoenas		47-606
Bakery license		47-2327	Issuance by chairman		47-606
Ballroom license		47-2320	Service by police officer		47-606
Barber shop license		47-2310	Three of members to assess real property		47-605
Baseball grounds license		47-2323	Witness fees		47-606
Beauty parlor license		47-2310	Board of Equalization and Review		
Billiard parlor license		47-2321		47-605, 47-606, 47-703—	47-711
Board of assistant assessors		47-604—	Annual meeting		47-703
47-606, 47-704—47-708, 47-710—47-712, 47-716, 47-717, 47-1201			Publication of notice		47-703
Annual tabulated report of property assessed		47-706	Required		47-703
Appeal of assessment of omitted property to Board of Tax Appeals		47-712	Appeal of new structure assessments to Board of Tax Appeals		47-711
Appeal of reassessment and redistribution on subdivisions to Board of Tax Appeals		47-716	Appeals from assessment, equalization, or valuation by, to Board of Tax Appeals		47-709
Appeal of reassessment where assessment is voided to Board of Tax Appeals		47-712	Appeals from assessment to Board of Tax Appeals		47-710
Appointment		47-604	Authority to raise and lower valuations		47-708
As members of Board of Equalization and Review		47-605	Date for completion of valuation and equalization		47-709
As members of Board of Personal Tax Appeals		47-605	Duty to equalize value of real property		47-708
Assessing new structures		47-711	Hearing complaints on assessments		47-708
Assessing omitted property		47-712	Membership		47-605
Assessment of property omitted from regular assessment		47-712	Perjury by witness, penalty		47-606
Clerk, appointment		47-604	Reviewing assessments of new property		47-710
Connivance in evasion of assessments, penalty		47-707	Reviewing new structure assessments		47-711
Conveyance to view property for assessment		47-704	Reviews real property assessments		47-605
Determining dimensions of tracts		47-705	Subpoenas, issuance and service		47-606
Determining separately value of tracts and improvements		47-705	Valuations, approval by Commissioners of District		47-709
Duties		47-605	Witness fees		47-606
Improvements to old structures, annual return		47-710	Board of personal tax appeals		
Maps, books, surveys and plats		47-704		47-605, 47-1203, 47-1213, 47-1214	
Commissioners of District to furnish		47-704	Appeal from rejection of sworn return		47-1203
Deposit with assessor		47-704	Appeals within thirty days after notice of assessment		47-1213
Inspection by taxpayers		47-704	Constitution of board		47-1213
Neglect of duty, penalty		47-707	Membership		47-605
New structures erected or roofed, annual return		47-710	Notice of sessions publication		47-1213
Oath		47-604	Power to increase or diminish assessments		47-1213
Perjury on part of witness, penalty		47-606	Review of personal property assessments		47-605
Personal property, three members to assess		47-1201	Sessions, time for		47-1213
Qualifications		47-604	Board of personal tax appraisers 47-1213, 47-1214		
Real property becoming subject to taxation, annual list		47-710	Assessment of omitted property		47-1213
Reassessment and redistribution of assessments		47-717	Clerk and assistant, appointment by Commissioners of District		47-1214
Reassessment and redistribution on subdivisions		47-712	Inspectors, appointment and duties		47-1214
			Board of tax appeals 47-2402—47-2412		
			Appeal from board of assistant assessors		47-2405
			Appeal from board of equalization and review		47-2405
			Appeal from personalty assessments		47-2403
			Appeal from real property assessments		47-2405
			Buildings erected or roofed prior to January 1		47-2405
			Equalization of assessments		47-2405
			General assessments		47-2405
			New structures or improvements		47-2405



## TAXATION AND FISCAL AFFAIRS—Con. Sec.

Board of tax appeals—Continued	
Appeal from real property assessments—Continued	
Omitted property	47-2405
Reassessment on subdivisions	47-2405
Reassessment where prior assessment was voided	47-2405
Redistribution of subdivision assessments	47-2405
Valuation for assessment	47-2405
Appeal from tax involuntarily paid	47-2406
Authority to affirm, cancel, reduce or increase assessments	47-2403
Business-privilege tax assessments, appeal	47-2403
Compelling attendance of witnesses	47-2409
Conclusions of law	47-2403
Court of Appeals modifying or reversing decision, effect	47-2404
Court of Appeals remanding for rehearing, effect	47-2404
Court's power to affirm decisions	47-2404
Court's power to modify or reverse decisions not in accordance with law	47-2404
Decision	47-2403
Review by Court of Appeals	47-2404
Definitions	47-2401
Establishment	47-2402
Estate tax assessments, appeal	47-2403
Examination of witnesses and records	47-2409
Fee for comparing transcript of record	47-2404
Fee for preparing transcript of record	47-2404
Fee for supplying documents	47-2404
Finding of facts	47-2403
Gross-earnings assessment, appeal	47-2403
Gross-receipts assessment, appeal	47-2403
Hearings	47-2403
Income tax assessments, appeal	47-2403
Inheritance tax assessments, appeal	47-2403
Insurance-premium tax assessments, appeal	47-2403
"Mandate" defined	47-2404
Manner of serving notice	47-2411
Motor-vehicle-fuel tax assessments, appeal	47-2403
Payment of personal taxes under protest required before appeal	47-2403
Personal property assessments, appeal	47-2403
Petition for review of decisions	47-2404
Filing by District	47-2404
Filing by taxpayer	47-2404
Regulation of form by Board of Tax Appeals	47-2404
Time limit for filing	47-2404
To be filed with Board of Tax Appeals	47-2404
Qualifications	47-2402
Reference of taxation questions by Commissioners of District	47-2412
Review of decisions by courts	47-2404
Board's finding of fact, effect	47-2404
Conduct of proceedings	47-2404
Exclusive jurisdiction	47-2404
Judgments final, except for Supreme Court review by certiorari	47-2404

## TAXATION AND FISCAL AFFAIRS—Con. Sec.

Board of tax appeals—Continued	
Review of decisions by court—Continued	
Rules for filing record on review	47-2404
Rules for preparing record for review	47-2404
Rules of procedure, adoption and promulgation	47-2408
Salary	47-2402
Summons	47-2409
For production of records	47-2709
Power to issue	47-2409
Service by police officer	47-2409
To witnesses	47-2709
Supreme Court modifying or reversing decision, effect	47-2404
Supreme Court ordering rehearing, effect	47-2404
Taxes erroneously paid	47-2407
Determination	47-2407
Refund	47-2407
When decision is final	47-2404
Denial of certiorari	47-2404
No petition filed in time allowed	47-2404
No petition for certiorari filed in time allowed	47-2404
Thirty days after Supreme Court's mandate is issued	47-2404
Bottling plant license	47-2327
Bowling alley license	47-2321
Budget estimates	47-201—47-212
Burlesque theater license	47-2320
Bus line license	47-2331
Candy factory license	47-2327
Carnival building license	47-2320
Carnivals, outdoor, license	47-2326
Certificates of taxes and assessments due, assessor to furnish	47-603
Circus licenses	47-2325
Clairvoyant license	47-2342
Closed highways and streets apportioned among abutting owners	7-124
Collection and disbursement of taxes	47-301—47-311
Audit of disbursement vouchers	47-309
Certifying taxes and assessments due, effect	47-306
Collector of taxes	47-301
Account books, contents and inspection	47-305
All taxes to be collected by	47-301
Bond	47-302
Cashier of collector's office, duties and bond	47-304
Collections to be deposited in Treasury daily	47-301
Deposits to "miscellaneous trust-fund deposits"	47-311
Deputy collector, duties and bond	47-303
Method of disbursement	47-309
Settlement of accounts	47-309
Taxes and assessments omitted from record of assets of District	47-308
Waiver of interest and penalties, grounds	47-307



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Collection of delinquent taxes		47-1209	Disbursing officer—Continued		
Collection of revenue belonging to United States		47-503	Claims against "outstanding liabilities" account		47-125
Collection of taxes not to be enjoined		47-2410	Deputy		47-113
Collections under assessment and permit system payable to collector of taxes		47-129	Bond		47-113
Collector of taxes	47-301—47-306, 47-308, 47-309, 47-311		Duties		47-113
Collection of taxes	47-301—47-311		Director of public welfare, advances to		47-115
Duties regarding income tax	47-1501—47-1543		Librarian of public library, advances to		47-118
Entering time for family dwelling tax payments		47-902	Major and superintendent of police, advances to		47-114
Purchasing real property at tax sale for District		47-1002	Objections to allowance of disbursements		47-119
Refunding payments for licenses refused		47-1017	Payment of employees and laborers		47-112
Report of tax sales		47-1006	Superintendent of penal institutions, advances to		47-117
Statement of total assessment and total taxes		47-601	Suspension of items in accounts, notice		47-119
Commission merchants, food, license		47-2327	District to collect certain United States revenue		47-503
Courts declaring tax void, refund		1-903	Diversion of funds, penalty		47-103
Dance hall license		47-2320	Divulging information obtained from Bureau of Internal Revenue, penalty		47-2504
Delicatessen license		47-2327	Dog tax		47-2001—47-2008
Deposit of United States revenue to "miscellaneous receipts"		47-503	Authority of poundmaster as special police officer		47-2008
Designation of property for assessment and taxation		47-401—47-408	Dogs wearing tax tag permitted to run at large, exception		47-2003
In city of Washington		47-401—47-403	Impounding of dogs without tax tag		47-2002
Daily transcript of deeds and wills		47-403	Owner's liability for damage by tagged dog		47-2004
Designation to be official		47-402	Rate		47-2001
Numbering squares, lots and parcels		47-401	Removing dog's tax tag, penalty		47-2007
Record of designation in surveyor's office		47-401	Tax tag to be attached to collar		47-2006
Outside city of Washington,			Drive-it-yourself agency license		47-2332
Designation to be official		47-408	Drivers of sight-seeing buses, license		47-2331
Employee of surveyor to make daily transcript of deeds, wills, condemnations		47-407	Drivers of taxicabs and hacks, license		47-2331
Numbering blocks, squares, lots, parcels in highway extension plan and subdivisions		47-405	Druggist licenses		47-2308
Plat books		47-406	Dry cleaning establishment licenses		47-2317
Sufficiency of description		47-404	Dyeing establishment licenses		47-2317
Detective agency license		47-2341	Entertainment hall license		47-2320
Disbursement of appropriations		47-309	Estate taxes		47-1608—47-1629
Disbursement of tax revenues		47-301—47-311	Exemptions from taxation	47-801—47-830, 47-1208	
Disbursing officer		47-112—47-119	Alley Dwelling Authority property		5-114
Accounting for funds		47-112, 47-309	Almshouses		47-801
Advances from "miscellaneous trust-fund deposits"		47-311	American Legion		47-828
Amount of unpaid checks to be deposited in Treasury		47-124	Benevolent institutions		47-1208
Appointment		47-112	Cemeteries		47-801
Audit of accounts		47-112	Charitable institutions		47-801
Bond		47-112	Chesapeake and Ohio Canal		47-807
Checks		47-121	Church buildings and grounds		47-801
Auditor to countersign		47-121	Corcoran Gallery of Art	47-801, 47-809, 47-810	
Outstanding three years, amount of to be deposited in Treasury		47-124	Building and grounds		47-801, 47-809
Payment of outstanding checks after amounts have been deposited in Treasury		47-125	Endowment fund property		47-810
Chief probation officer of juvenile court, advances to		47-116	Works of art		47-809
			Correctional institutions		47-801
			Daughters of the American Revolution		47-821—47-825
			Family portraits		47-1208
			Foreign legations		47-803
			Frederick Douglass Memorial and Historical Association		47-818
			Free public library buildings		47-801
			General Education Board		47-820
			Glebe houses owned by church or congregation		47-801



## TAXATION AND FISCAL AFFAIRS—Con. Sec.

## Exemptions from taxation—Continued

Household goods of public employee when taxed elsewhere	47-1208
Household goods owned by occupant of house where located	47-1208
Houses for the reformation of offenders	47-801
Howard University	47-811
Income tax	47-1502
Libraries	47-801, 47-1208
Louise Home property	47-805
Luther Statue Association	47-812
National Education Association	47-829
Orphan asylum buildings and grounds	47-804
Parsonages owned by church or congregation	47-801
Pastoral residences owned by church or congregation	47-801
Personal property	47-806, 47-809—47-811, 47-814, 47-820, 47-829, 47-830, 47-1208
Property exempted by United States laws	47-801
Property of District of Columbia	47-803
Property of Oak Hill Cemetery Company	47-808
Property of United States	47-803
Property used for educational purposes	47-802
Real property	47-801—47-805, 47-807—47-830
Rectories owned by church or congregation	47-801
Saint Marks Protestant Episcopal Church	47-813
Schoolbooks	47-1208
Scientific institutions	47-1208
Sheridan tapestries	47-806
Society of the Cincinnati	47-830
Soldiers' Home building and grounds	47-801
Sons of the American Revolution	47-827
The Edes Home	47-819
United States Daughters of 1812	47-826
Wearing apparel	47-1208
Young Men's Christian Association	47-817
Young Woman's Christian Home	47-814
Young Women's Christian Association	47-815
Exhibition hall license	47-2320
Expenditures for repairs to school, statement to be submitted with estimates	47-201
Explosives	47-2314
Sales location license	47-2314
Storage license	47-2314
Fair building license	47-2320
Fairs, outdoor, license	47-2326
Family dwellings occupied by owner	47-901—47-905
Affidavit of domicile and ownership required	47-905
Extension of time for payment of taxes	47-902
Grounds for extension	47-902
Interest payment to accompany application	47-902
Length of extension	47-902
Written application required	47-902
Installment payment of taxes	47-901
Notice before sale for delinquent taxes	47-903
Persons entitled to benefit from provisions	47-905
Sale for taxes invalidated when based on errors in computation	47-904

## TAXATION AND FISCAL AFFAIRS—Con. Sec.

## Family dwellings occupied by owner—Con.

Statement of taxes	47-901
Contents	47-901
Effect of omissions	47-901
Sent on written application of owner	47-901
Fees collected payable into Treasury	47-126
Bathing beach fees	47-126
Building inspection fees	47-126
Building permit fees	47-126
Electrical permit fees	47-126
Harbor master's fees	47-127
Health Department fees	47-126
Inspector of meters, fees of	47-127
Motor vehicle wheel tax	47-126
Municipal Court fees	47-126
Nonresident pupils, tuition fees	47-126
Pound fees	47-126
Public convenience station fees	47-126
Railing permits fees	47-126
Reservation lease fees	47-127
Street lease fees	42-127
Superintendent of weights, measures and markets, fees	47-126
Surveyor's office, fees	47-126
Tax certificate fees	47-126
Wharf fees	47-127
Fees, fines and other revenue to be deposited into Treasury and credited in proportion to appropriations	47-130
Financial institution taxes	47-1701—47-1709
Banks	47-1701
Building associations	47-1704
Insolvent building or homestead associations	47-1705
Abatement of personal property taxes	47-1705
Note brokers	47-1708
Annual tax	47-1708
Time for payment	47-1709
Private banks	47-1706
Annual tax	47-1706
Time for payment	47-1709
Savings banks	47-1703
Washington Stock Exchange	47-1707
Firearm dealers, license	47-2340
Fire escapes and safety provisions, failure to erect after notice	5-310, 5-313
Commissioners erecting, assessment of cost against property	5-310
Fire-plug tax	43-1525—43-1528
Fiscal year of the District of Columbia	47-101
Football grounds license	47-2323
Fortune teller license	47-2342
Garage license	47-2334
Gasoline station license	47-2314
General license law	47-2301—47-2350
Abattoirs	47-2316
Abolition by Commissioners	47-2344
"Agent" defined	47-2307
Amusement park grounds	47-2323
Apartment houses	47-2329
Apothecaries, fee	47-2308
Applications for license	47-2301



## TAXATION AND FISCAL AFFAIRS—Con.

Sec.

## General license law—Continued

Assignment of license, fee	47-2301
Athletic exhibition grounds	47-2323
Auctioneers, fee	47-2309
Automobile rental agencies	47-2332
Bakeries	47-2327
Ballrooms	47-2320
Barber shops	47-2310
Baseball grounds	47-2323
Beauty parlors	47-2310
Billiard parlors	47-2321
Bottling plants	47-2327
Bowling alleys	47-2321
Burlesque theaters	47-2320
Business, operating without required li-	
cense prohibited	47-2301
Bus lines	47-2331
Candy factories	47-2327
Carnival building	47-2320
Circuses	47-2325
Clairvoyants	47-2342
Commission merchants, food	47-2326
Construction of terms	47-2307
Contents of license	47-2301
Dance halls	47-2320
Date and expiration of licenses	47-2305
"Dealers" defined	47-2307
Dealers in dangerous weapons	47-2340
Decreasing license fees, authority of Com-	
missioners of District	47-2344
Definition of terms	47-2307
Delicatessens	47-2327
Detective agencies	47-2341
Drive-it-yourself agencies	47-2332
Drivers of sight-seeing buses	47-2331
Drivers of taxicabs and hacks	47-2331
Druggists, fee	47-2308
Dry-cleaning establishments	47-2317
Dyeing establishments	47-2317
Each location to be licensed separately	47-2304
Eliminating licenses, authority of Com-	
missioners of District	47-2344
Entertainment halls	47-2320
Exhibiting license to police	47-2306
Exhibition halls	47-2320
Explosive sales locations	47-2314
Explosive storage plants	47-2314
Fair building	47-2320
Firearm dealers	47-2340
Fish dealers, wholesale	47-2327
Food dealers, dual license	47-2327
Football grounds	47-2323
Fortune tellers	47-2342
Garages	47-2334
Gasoline stations	47-2314
Grocery stores	47-2327
Guides	47-2338
Gun dealers	47-2340
Hauling vehicles	47-2333
Hawkers	47-2336
Hotels	47-2302, 47-2328
House to house solicitors	47-2337
Ice cream factories	47-2327
Ice cream parlors	47-2327

## TAXATION AND FISCAL AFFAIRS—Con.

Sec.

## General license law—Continued

Increasing license fees, authority of Com-	
missioners of District	47-2344
Kerosene storage plants	47-2314
Laundries	47-2317
Lecture halls	47-2320
Legitimate theaters	47-2320
Licensing additional businesses, authority	
of Commissioners of District	47-2344
Livery stables	47-2335
Lodginghouses	47-2330
Marine product dealers, wholesale	47-2327
Market stands handling foods	47-2327
Massage establishments	47-2311
Mattress manufacturing or renovating	47-2318
Mattress storage	47-2318
Mattress storage or sale locations	47-2318
Meat shops	47-2327
Medicated baths	47-2311
Mediums	47-2342
"Merchandise" defined	47-2307
Motion picture film storage establish-	
ments	47-2313
Motion picture theaters	47-2320
Motor vehicle renting establishments	47-2332
Motor vehicle repair establishments	47-2334
Opera houses	47-2320
Outdoor carnivals	47-2326
Outdoor fairs	47-2326
Palmists	47-2342
Patent medicine sellers, fee	47-2308
Peddlers	47-2336
Penalties	47-2347
"Person" defined	47-2307
Phrenologists	47-2342
Pool halls	47-2321
Posting of licenses required	47-2306
Prerequisites to license	47-2301, 47-2302
Certificate of compliance, when re-	
quired	47-2302
Chief fire officer's certificate of com-	
pliance	47-2302
Compliance with building require-	
ments	47-2302
Compliance with fire escape laws	47-2302
Electrical engineer's certificate of	
compliance	47-2302
Hotels, apartments, lodging houses	47-2302
Inspector of buildings, certificate of	
compliance	47-2302
Payment of license fee	47-2301
Theatres, public halls, amusement	
parks	47-2302
Private detectives	47-2341
Profession, operating without required li-	
cense prohibited	47-2301
Prorating fee for late application	47-2305
Prosecutions	47-2346
Public bath establishments	47-2312
Pyroxylin storage	47-2315
Refund of erroneously paid fees	47-2350
Regulatory powers of Commissioners of	
District	47-2345
Restaurants	47-2327



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
General license law—Continued			Insurance companies 35-105, 47-1801-47-1808		
Revocation of licenses		47-2345	Amount added for nonpayment		47-1807
Routed passenger vehicles for hire		47-2331	Annual license fee		47-1801
Russian baths		47-2311	Annual statement filing fee		47-1804
Saving clause		47-2348	Associations exempted		47-1808
Seal to be impressed on license		47-2301	Companies to which applicable		47-1801
Second-hand dealers		47-2339	Excise tax		47-1806
Separate license for person's separate businesses		47-2304	Failure to file annual statement, revocation of authority		47-1805
Severability of provisions		47-2349	Filing of annual statement required		47-1804
Shooting galleries		47-2322	Liability for payment		47-1807
Sight-seeing buses		47-2331	"Net premium receipts" defined		47-1806
Skating rink buildings		47-2320	Operating without license, penalty		47-1802
Slaughterhouses		47-2316	Penalty clause		47-1802
Slot machines		47-2319	Prosecution		47-1803
Soda fountains		47-2327	Interest during delinquency		47-1209
Soft drink establishments		47-2327	Kerosene storage license		47-2314
Soothsayers		47-2342	Lecture hall license		47-2320
Street sales		47-2336	Legitimate theater license		47-2320
Swimming pools		47-2324	License law of 1932	47-2301-47-2350	
Taxicabs and hacks		47-2331	License prosecutions		47-2346
Theaters	47-2303, 47-2320		Licenses, generally	47-2301-47-2350	
Revocation for failure to comply with decency regulations		47-2303	Licenses refused, refund of payments		47-1017
Trade, operating without required license prohibited		47-2301	Liens for unpaid real property taxes	47-1011-47-1014	
Transfer of license, fee		47-2301	Alternative methods of enforcing	47-1003, 47-1011	
Transfer vehicles		47-2333	Commissioners of District petitioning for enforcement		47-1011
Turkish baths		47-2311	Court clerk to make and deliver deed		47-1014
Use of license by others prohibited		47-2304	Court deed is absolute conveyance		47-1014
Use of persons or animals as targets prohibited		47-2343	Decree for sale by collector of taxes		47-1013
Venders		47-2336	Disbursement of redemption payments		47-1018
Vending machines		47-2319	Disposition of surplus proceeds of sale		47-1014
General provisions	47-101-47-134		Effect of publication of order to appear		47-1012
Grocery store license		47-2327	Notice before enforcement		47-1012
Guaranty company taxes		47-1702	Content		47-1012
Bonding companies		47-1702	Publication		47-1012
Fidelity companies		47-1702	Registered mailing to owner		47-1012
Title abstractors		47-1702	Order to appear, publication		47-1012
Title insurers		47-1702	Penalties uncollectible if there were defects in tax sale		47-1013
Guide license		47-2338	Petition to District court for enforcement		47-1011
Gun dealers license		47-2340	Publication of notice of sale		47-1013
Hauling vehicle license		47-2333	Redemption before sale to enforce		47-1011
Hawkers, license		47-2336	Sales by collector of taxes or his deputy		47-1013
Health, accident and life insurance companies		35-202	Sales to be reported to court for confirmation		47-1014
Hotel license		47-2328	Livery stable license		47-2335
House to house solicitors, license		47-2337	Lodging house license		47-2330
Hypothecation of taxes prohibited		1-219	Market rents, fees and income payable to collector of taxes		47-128
Ice cream factory license		47-2327	Market stands handling food		47-2327
Ice cream parlor license		47-2327	Massage establishment licenses		47-2311
Improvement to streets about the Capitol		47-1107	Mattress manufacturing license		47-2318
Assessment of private property for Secretary of the Interior to assess and collect costs		47-1107	Mattress renovating license		47-2318
Income tax	47-1501-47-1543		Mattress sale location license		47-2318
Indebtedness limited, penalty for increasing		47-102	Mattress storage license		47-2318
Inheritance tax	47-1601-47-1607, 47-1616-47-1629		Meat shop license		47-2327
Insanitary buildings		5-607, 5-614	Medicated bath licenses		47-2311
Demolishing at public expense, assessment of cost		5-607	Medium license		47-2342
Removal under court order		5-614	Membership dues of District employees to be specifically authorized		47-111



TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Miscellaneous trust-fund deposits	47-311	
Advances to disbursing officer	47-311	
Separate accounts of deposits and payments	47-311	
Motion picture film storage license	47-2313	
Motion picture theater license	47-2320	
Motor fuel tax	47-1901—47-1919	
Motor vehicle renting establishment licenses	47-2332	
Moving van license	47-2333	
Officers to give security	47-103	
Opera house license	47-2320	
Palmist license	47-2342	
Parcels subdivided from January to June		
Date for payment of taxes	47-714	
Payment before admission to record	47-714	
Validity of reassessment and redistribution	47-716	
Parcels subdivided from July to December	47-713	
Date for payment of taxes	47-713	
Payment before admission to record	47-713	
Validity of reassessment and redistribution	47-716	
Payment of taxes	47-1209	
Date determining delinquency	47-1209	
Date for payment	47-1209	
Installment payment	47-1209	
Interest during delinquency	47-1209	
Real property	47-1209	
Peddlers, license	47-2336	
Permanent appropriations	47-108—47-110	
Certain funds continued as trust funds	47-110	
Certain provisions abolished	47-109	
Certain provisions repealed	47-108	
Personal property taxes	47-1201—47-1214	
Abating on insolvent building or home- stead associations	47-1705	
Acquisition of lien in collecting	47-1406	
Certificate of delinquent personal taxes	47-1406	
Certificate to have effect of judgment lien	47-1406	
Filing certificate with District court clerk	47-1406	
Appeals to board of personal-tax ap- peals	47-1203	
Appraisers administering oaths	47-1203	
Appraisers entering cash values on sched- ules	47-1203	
Ascertaining correctness of returns	47-1401	
Ascertaining information where returns not made	47-1401	
Assessment at full value	47-1202	
Assessment by three assistant assessors	47-1201	
Assessment of motor vehicles	47-1210	
Date for	47-1210	
Rate of taxation	47-1210	
Assessment of omitted property	47-1213	
Appeals	47-1213	
Notice of assessment	47-1213	
Assessment within two years of return re- quired	47-1408	
Assessor certifying want of information to Commissioners of District	47-1209	

TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Personal property taxes—Continued		
Assessors summoning witnesses	47-1401	
Blanks for scheduling property	47-1203	
Board of personal tax appeals	47-1213	
Board of personal tax appraisers	47-1213, 47-1214	
Collection, enforcing	47-1301—47-1305, 47-1401—47-1412	
Collection within three years of assess- ment on return	47-1408	
Date for return of personal property for taxation	47-1206	
Distrain of chattels as aid to collection	47-1402	
Duties of collector of taxes on sale of chattels	47-1402	
Enforcement	47-1301—47-1305, 47-1401—47-1412	
Enforcement by distraint of chattels	47-1301, 47-1302	
Bidding in for District, when re- quired	47-1302	
Collector of taxes to distrain	47-1301	
Disposition of surplus from sales	47-1301	
Place of sale	47-1302	
Posting notice of sale	47-1301	
Private sale when bid in for District	47-1302	
Publishing notice of sale	47-1301	
Report of sale by collector of taxes	47-1301	
Safekeeping pending sale	47-1302	
Sale at public auction	47-1301, 47-1302	
Enforcement by levy on lands	47-1301, 47-1305	
Bidding in for District, when re- quired	47-1305	
Collector of taxes to make levy	47-1301	
Disposition of surplus of sale	47-1301	
Dwellings occupied by owner, restric- tions on sale	47-903, 47-904	
Posting notice of sale	47-1301	
Procedure as in sale for real prop- erty taxes	47-1301	
Publishing notice of sale	47-1301	
Report of sale by collector of taxes	47-1301	
Sale at auction	47-1301	
Sale in equity when bid in for Dis- trict	47-1305	
Enforcing lien by bill in equity in Dis- trict Court	47-1406	
Enumeration of those required to return schedules	47-1203	
Examination of books, papers, records	47-1401	
Exemptions from taxation	47-1208	
Failure to file return on time	47-1408	
Collection within three years of as- sessment	47-1408	
No time limit on assessment	47-1408	
Penalty and prosecution	47-1410	
Failure to include all taxable property in return	47-1408	
Collection within three years of as- sessment required	47-1408	
No time limit on assessment	47-1408	
Failure to obey assessor's summons, pro- cedure	47-1401	



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Personal property taxes—Continued			Personal property taxes—Continued		
False or incorrect return		47-1408	Time limitations		47-1408
Collection within three years of			Vessels, ships and boats of new common		
assessment required		47-1408	carrier		47-1212
No time limit on assessment		47-1408	Affidavit showing payment of taxes		
Intangible property, collection of taxes	47-1304		elsewhere		47-1212
Liability for failure to surrender goods lev-			Assessor to render tax bill		47-1212
ied upon		47-1404	Auction sale where not redeemed		47-1212
Lien to enforce payment		47-1406	Distrain for nonpayment		47-1212
Mandamus to compel filing of return		47-1209	Owner to state value before doing		
Motor vehicles	47-1210, 47-1211		business		47-1212
Assessment		47-1210	Payment of tax, time limit		47-1212
Proration for time in District		47-1211	Reassessment when valued too low		47-1212
Obstructing examinations of assessor		47-1401	Redemption when distrained, penalty		
Payment		47-1209	due		47-1212
Penalty for failure to exhibit papers in			Wrongful distraints		47-1407
distrain proceedings		47-1405	Act under direction of Commission-		
Penalty for violating provisions regard-			ers of District, payment of re-		
ing		47-1303	coveries by District		47-1407
Perjury in affidavits to schedules		47-1203	Probable cause for act, District to pay		
"Person" defined		47-1411	recoveries		47-1407
Persons required to exhibit papers in dis-			Recovery in suit against collector of		
traint proceedings		47-1405	taxes		47-1407
Rate of taxation		47-1207	Phrenologist license		47-2342
Remedies for collection are additional to			Pool hall license		47-2321
earlier sections		47-1409	Private detective license		47-2341
Remedies for enforcing payment		47-1304	Private employment agency licenses		
"Resident of the District of Columbia"				47-2101—47-2111	
defined		47-1205	"Applicant for employment" defined		47-2101
"Return" defined		47-1411	"Applicant for help" defined		47-2101
Sale of distrained chattels		47-1402	Bond of licensee		47-2102
Schedules		47-1203	Definitions		47-2101
Affidavit required		47-1203	Denial of license		47-2101
Content		47-1203	Licensee prohibited from taking minor's		
Delivery to assistant assessor		47-1203	application		47-2106
Delivery upon request		47-1203	License fee		47-2101
Failure to file, effect	47-1203, 47-1209		"Nurses' registry" defined		47-2101
Mandamus to compel filing		47-1209	Operation without license unlawful		47-2101
Notice that schedules are ready, pub-			"Private employment agency" defined		47-2101
lication		47-1203	Receipts by licensee		47-2104
Preparation by assessor		47-1203	Register to be kept by licensee		47-2103
Rejection of sworn return, appeal		47-1203	Restrictions on location of licensed		
Time for filing	47-1203, 47-1206		agency		47-2105
Secrecy of returns protected		47-1412	Revocation of license		47-2101
Divulging contents unlawful		47-1412	Suspension of license		47-2101
Inspection by corporation counsel		47-1412	"Theatrical employment agency" defined		
Penalty for violating secrecy		47-1412		47-2101	
Production in court, limitations		47-1412	Writ of error on denial, revocation or sus-		
Statistical reports permitted		47-1412	pension		47-2101
Stocks of new mercantile establishments	47-1212		Property escaping taxation, liability after as-		
Assessor to render bill for taxes		47-1212	essment		47-712
Auction sale where not redeemed		47-1212	Property in city of Washington sold by United		
Distrain for nonpayment		47-1212	States to be liable to taxation from day of		
Owner to state value before doing			sale		47-409
business		47-1212	Property sold for taxes, list		47-1010
Payment of tax, time limit		47-1212	Property sold for taxes, preparation of list		
Reassessment when valued too low	47-1212		by assessor		47-603
Redemption of distrained stocks, pen-			Property taxes in arrears on July 1, prepara-		
alty due		47-1212	tion of list		47-603
Seizure by collector of taxes		47-1212	Property tax rates		47-501
Surrender of goods levied upon required,			Authority of Commissioners of District to		
exception		47-1403	fix		47-501
Tangible personal property in transit ex-			Intangibles		47-501
empted		47-1204	Personal property		47-501
			Real property		47-501



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Proportion of appropriations for District court expenses		47-204	Real property, assessment of—Continued		
Public auction permits		47-2201—47-2208	Reassessment and redistribution		47-717
Applications		47-2202	Prior notice to owners		47-717
Commissioners of District to issue		47-2201	Right of appeal		47-717
Construction of permit law		47-2208	Subdivisions		47-712
Jewelry and plated ware, night sales prohibited		47-2205	Reassessment when assessments are voided by court		47-721
Misrepresenting merchandise		47-2206	Reassessment where prior assessment is voided		47-712
Operation without unlawful		47-2201	Reduction on damage or destruction of improvements		47-710
Personal effects, furniture and livestock, when exempted		47-2203	Review		47-708
Prosecution of permit law violations		47-2207	Review of assessments on new property		47-710
Restriction on issuance		47-2201	Review of assessments on new structures		47-711
Sales under authority of law exempted		47-2201	Review of reassessment where assessment is voided		47-712
Suspension		47-2204	Subdivisions		47-716
Violation of permit law, penalty		47-2207	Appeal of reassessment or redistribution		47-716
Public bath establishment licenses		47-2312	Reassessment and redistribution		47-716
Public employment agency licenses			Undivided tracts, redistribution of assessments		47-715
Employment contracts of licensees		47-2110	Application by owner of parcel of tract		47-715
Exceptions from license requirement		47-2109	Application by owner of tract		47-715
Fraudulent acts of licensee		47-2108	Validity		47-716
Inspection of licensee's records		47-2107	Validity of reassessment and redistribution		47-716
Violations by licensee, penalty		47-2111	Value of tracts and improvements to be determined separately		47-705
Public utility taxes		47-1701	Washington Terminal Company		47-718, 47-719
Electric lighting companies		47-1701	Receipt and disbursement accounts		47-502
Gas companies		47-1701	Appropriations under which expenditures are made to be shown		47-502
Street railway companies		47-1701	Purpose of expenditure to be shown		47-502
Telephone companies		47-1701	Source of revenue to be shown		47-502
Pyroxylin storage license		47-2315	Treasury Department to keep		47-502
Real property, assessment of		47-701—47-723	Refund of erroneously paid license fees		47-2350
Annual assessment required		47-702	Refund of erroneous payment of taxes		47-1016
Annual tabulated report of property assessed		47-706	Accounting and disbursing officers		40-1016
Appeal of assessments to Board of Tax Appeals		47-710	Certificate of collector of taxes, contents		40-1016
Assessment at true value		47-713	Commissioners of District ordering re-fund		40-1016
Assessment in name of deceased person		47-701	Disbursement		40-1016
Assessment in name of owner		47-701	Refund of payments for licenses refused		47-1017
Assessment in name of trustees of owner		47-701	Collector of taxes to make		47-1017
Baltimore and Ohio Railroad Co.		47-718, 47-719	Proportionate amount for time used to be deducted		47-1017
Baltimore and Potomac Railroad Co.		47-720	Refund of taxes determined by Board of Tax Appeals to have been erroneously paid		47-2407
Biennial assessment abolished		47-702	Refunds by Commissioners of District		1-903
By squares, lots, square feet, or acre		47-703	Remedies for enforcing payment of taxes		47-1304
Date for completion of valuation and equalization		47-709	Repayment of funds advanced from Treasury		47-2412
Equalization		47-708	Requisition for advance of funds		47-2412
Inclusion of new buildings		47-711	Restaurant license		47-2327
Maps, books, surveys and plats		47-704	Revenue derived from property not wholly or partly owned by District		47-502
New structures and improvements		47-710	Routed passenger vehicles for hire, license		47-2331
Owner unknown, how assessed		47-701	Rules and regulations		47-2502
Parcels subdivided from January to June		47-714	Authority of Commissioners of District to make		47-2502
Parcels subdivided from July to December		47-713	Prescribing and publishing		47-2502
Penalties		47-707			
Philadelphia, Baltimore and Washington Railroad Co.		47-718			
Property omitted		47-712			
Property omitted from regular assessment		47-712			
Real property becoming subject to taxation, annual list		47-710			



TAXATION AND FISCAL AFFAIRS—Con.	Sec.
Russian bath licenses	47-2311
Salaries of playground employees, payable out of District revenues only	47-133
Sales of animals and materials, proceeds payable to Treasury	47-132
Secondhand dealers, license	47-2339
Separability of provisions, revenue laws of 1937 and 1939	47-2503
Service mains, relevy of assessments	43-1515
Service sewers, assessment of abutting property	43-1510—43-1517
Collections to be credited to appropriations	43-1516
Definition	43-1517
Notice	43-1512
Payable in three installments	43-1513
Rates	43-1511
Unsubdivided land	43-1514
Sewer and water-main connections made at public expense	6-404
Nonresident owners	6-404
Shooting gallery license	47-2322
Sight-seeing bus license	47-2331
Skating rink license	47-2320
Slaughterhouse license	47-2316
Slot machine license	47-2319
Soda fountain license	47-2327
Soft drink license	47-2327
Soothsayer license	47-2342
Special assessments	47-1101—47-1107
Abatement, reduction or adjustment	47-1101, 47-1102
After protest is filed	47-1101
In absence of protest	47-1102
Effect on prior assessments	47-1103
For removal of nuisance	47-1105
Interest rate	47-1105
Nonpayment within sixty days, sale of property	47-1105
Hearings upon protests	47-1101
In condemnation proceedings	47-1104
Interest rate	47-1104
Nonpayment within four years, sale of property	47-1104
Payment after confirmation or ratification	47-1104
Period for payment without interest	47-1104
Installment payment	47-1103
Interest rate	47-1103
Nonpayment within two years, sale of property	47-1103
Notice of levy	47-1103
Personal service on owners	47-1103
Publication	47-1103
Service on tenant or agent	47-1103
Payment without interest, period for	47-1103
Protest hearing report	47-1101
Contents	47-1101
Copy to be mailed to protestant	47-1101
Protestant may file exceptions	47-1101
Protesting	47-1101
Protest to Commissioners of District	47-1101

TAXATION AND FISCAL AFFAIRS—Con.	Sec.
Special assessments—Continued	
Reassessment where assessment is voided	47-1106
Exceptions to report	47-1106
Hearing	47-1106
Interest on	47-1106
Manner of collection	47-1106
Notice to owner	47-1106
Report of hearing	47-1106
Time limit for making	47-1106
Time limit for protesting	47-1101
Statement of total assessments and total taxes	47-601
Preparation by assessor	47-601
Receipt to auditor	47-601
Receipt to collector of taxes	47-601
Receipt to General Accounting Office	47-601
Responsibility of collector of taxes on bond	47-601
Triplicate receipt by collector of taxes	47-601
Street sale license	47-2336
Surplus funds, distribution	47-503
From taxation, privileges and other sources	47-503
In excess of necessary expenses	47-503
Use succeeding year	47-503
Use to reduce tax rates	47-503
Swimming pool license	47-2324
Tax accounts	47-603
Assessor to prepare and retain	47-603
Contents	47-603
Personal property, date of preparation	47-603
Real property, date of preparation	47-603
Tax appeals	47-2401—47-2412
"Appeal" defined	47-2401
"Assessor" defined	47-2401
"Board" defined	47-2401
"Board of equalization and review" defined	47-2401
"Commissioners" defined	47-2401
"Court" defined	47-2401
Definitions	47-2401
"District" defined	47-2401
"Person" defined	47-2401
"Tax" defined	47-2401
Taxation of personal property	47-1201—47-1214
Tax bills, preparation by assessor	47-601, 47-603
Taxes erroneously paid, refund	47-1016
Taxicab and hack licenses	47-2331
Tax sales, real property	47-1001—47-1015
Advertising expense, how charged	47-1008
Application of new interest rates	47-1004
Assessor to furnish information	47-1009
Certificate of sale	47-1003
Commissioners of District not to convey if sale is invalid	47-1007
Day of sale, Commissioners of District to fix	47-1001
Deed of Commissioners of District	47-1003
Delinquent tax list	47-1001
Advertising	47-1001
Day determining arrears	47-1001
Preparation by assessor	47-1001
Publication of notice of publication	47-1001



TAXATION AND FISCAL AFFAIRS—Con.		Sec.	TAXATION AND FISCAL AFFAIRS—Con.		Sec.
Tax sales, real property—Continued			Vending machine license		47-2319
Deposit required		47-1003	Water mains, assessment of abutting prop-		
Disbursement of redemption payments		47-1018	erty		43-1510—43-1518
Disposition of surplus proceeds		47-1006	Collections to be credited to appropria-		
Effect of decree setting aside conveyance			tions		43-1516
by Commissioners of District		47-1007	Notice		43-1512
Failure of high bidder to pay, offer to			Payable in three installments		43-1513
second		47-1003	Rates		43-1511
Failure of second bidder to pay, purchase			Refund of overpayment		43-1518
for District		47-1003	Relevy		43-1515
Liens for unpaid taxes		47-1011—47-1014	Unsubdivided land		43-1514
Commissioners of District petition-			Water-main taxes to be uniform		43-1505
ing for enforcement		47-1011	Weapon dealers license		47-2340
Confirmation of sale		47-1014	Weeds on property, cutting at public expense		
Decree of sale		47-1013	after notice		6-902
Notice		47-1012	Wholesale fish dealers license		47-2327
Petition to District Court for en-			Wholesale marine products dealers license		47-2327
forcement		47-1011	Working capital for industrial enterprises,		
Redemption before sale to enforce		47-1011	workhouse and reformatory		47-131
List of property sold for taxes		47-1010	TAXATION, BOARDS OF		
Assessors to prepare and keep		47-1010	See TAXATION AND FISCAL AFFAIRS		
Open to public inspection		47-1010	Board of Assistant Assessors		47-604—
Method of sale		47-1001			47-606, 47-704—47-708, 47-710—47-712, 47-
Notice of sale, publication		47-1001			716, 47-717, 47-1201
Owner occupied family dwellings		47-903	Board of Equalization and Review		47-605,
Restrictions on sale		47-903			47-606, 47-708—47-711
Sales invalidated where based on			Board of Personal Tax Appraisers		47-1213—47-1214
error in computation of taxes		47-904	Board of Tax Appeals		47-2402—47-2412
Payment by purchaser, time limit		47-1003	TAXICABS		
Period for redemption		47-1003	As common carriers		43-111
Property purchased by District remains			Authority of Commissioners of District		47-2331
taxable		47-1003	Authority of Public Utilities Commission		47-2331
Purchase for District where other pur-			Charges of taxies and other public vehicles,		
chasers are lacking		47-1002	power to fix		1-223
Redemption by minors		47-1003	Drivers		47-2331
Redemption by owner		47-1003	Badge		47-2331
Redemption where District purchases		47-1003	License		47-2331
Report of tax sale		47-1006	Insurance required		44-301
Collector of taxes to make		47-1006	License		47-2331
Contents		47-1006	Fee		47-2331
Filing with recorder of deeds		47-1006	Identification tag		47-2331
Requirements to obtain deed		47-1003	Loitering		40-617
Resale where first sale voided		47-1003	Stands		47-2331
Right of redemption		47-1005	Traffic regulations		40-617
Validity not affected by errors in com-			Violation of insurance requirement, penalty		44-301
putation		47-1015	TAXICAB STANDS		
Turkish bath licenses		47-2311	Establishment and regulation of charges		1-224
Unsafe structures and excavations, building			Establishment near railroad station		1-222
inspector remedying condition		5-503	Powers of Commissioners		1-222
Abatement as nuisance, assessment of			Rates and charges, power to determine		1-222
costs and expenses		5-504	Power to locate		1-221
Assessment and collection of costs and		5-503	TAX SALES		
expenses			See TAXATION AND FISCAL AFFAIRS		
Valuation, approval by Commissioners, final		47-709	TEACHERS		
Valuation of United States property		47-722, 47-723	See EDUCATION		
By appointees of Secretary of Interior		47-723	Exception from Civil Service Law		1-217
Public buildings and parks exempted		47-722	Retirement of public school teachers		31-701—31-720
Return to President of Senate		47-722	Credit for public school service outside		
Return to Speaker of the House		47-722	District		
To be made within 5-year periods		47-722	Deposit payable in instalments		31-708
Under regulation of Secretary of In-			Deposit to cover		31-708
terior		47-723			
Venders, license		47-2336			



<b>TEACHERS—Continued</b>	Sec.	<b>TENEMENT-HOUSES</b>	Sec.
Retirement of public school teachers—Con.		See <b>APARTMENT HOUSES</b>	
Deductions from salary to purchase annuities	31-701	Definition	5-312
Definition of terms	31-714	<b>TERM TIME</b>	
Deposit of deductions to credit of teacher	31-702	Amendment of pleadings permitted in same term only	13-307
Funds not assignable	31-718	<b>THEATRES AND SHOWS</b>	
Funds not subject to execution or levy	31-718	Fireproof construction required	5-404
Income from funds invested to be credited	31-702	Fireproof walls between buildings	5-404
Investment of deposited deductions	31-702	Inspection, fees	5-316
Leave of absence less than two years does not break continuity	31-704	Lewd and obscene entertainment, complaints, right of entry, searches and seizures	4-145, 4-146
Longevity payable from District revenues	31-707	Prosecution of persons arrested	4-146
Calculation of annual appropriation	31-707	Licenses	47-2320
Certifying appropriation estimate to Budget Bureau	31-797	Fees	47-2320
Investment of reserves	31-707	Prerequisites	47-2302
Minimum service credit in disability retirements	31-706	Revocation for violation of decency regulations	47-2303
No salaried official to receive additional pay	31-716	Theatrical employment agency	47-2101
Payment on death of teacher	31-710	<b>THEODORE ROOSEVELT ISLAND</b>	
Beneficiaries to have been named	31-710	Acceptance of gift authorized	8-164
Precedence of payment	31-711	Administered by Director of National Park Service	8-164
Provisions do not prevent discharge	31-713	Designation in documents, records, and maps	8-167
Records	31-715	Maintenance and development	8-164
Refund on leaving service	31-709	Means of access, provision for	8-165
Reinstatement after withdrawal	31-709	Monument or memorial, approval of plan	8-166
Retirement age	31-703	<b>THERAPEUTICS</b>	
Retirement for disability after forty-five	31-704	Dentist, examination for license	2-308
Rules and regulations	31-717	Podiatry license examination	2-705
Sabbatical year leaves	31-632—31-637	<b>THIRTEENTH STREET</b>	
Seduction of pupil by, penalty	22-3002	Eminent domain, assessment of benefits and damages	7-219
<b>TEACHERS' COLLEGE</b>		Dismissal of proceedings, damages exceeding benefits	7-219
See <b>EDUCATION</b>		<b>TIME</b>	
<b>TEACHERS' RETIREMENT FUND ASSOCIATIONS</b>		See <b>COMPUTATION OF TIME</b>	
Exemption from income tax	47-1502	<b>TINCTURE OPII CAMPHORATA</b>	
<b>TECHNICAL WORDS</b>		See <b>NARCOTIC DRUGS</b>	
Use in pleadings	13-203	Sale, restrictions	33-410
<b>TELEGRAPH</b>		<b>TITLE ABSTRACT COMPANIES</b>	
See <b>PUBLIC UTILITIES</b>		Excise tax	47-1702
"Telegraph corporation" defined	43-119	<b>TITLE COMPANIES</b>	
"Telegraph line" defined	43-120	See <b>BANKS AND OTHER FINANCIAL INSTITUTIONS</b>	
<b>TELEPHONE COMPANIES</b>		<b>TITLE INSURANCE COMPANIES</b>	
Excise tax	47-1701	Excise tax	47-1702
<b>TELEPHONES</b>		<b>TOBACCO</b>	
See <b>PUBLIC UTILITIES</b>		Furnishing to minors, penalty	22-1120
Fire Department members	4-409	<b>TOILETS</b>	
Police Department member, when required to maintain	4-132	See <b>PRIVIES</b>	
"Telephone corporation" defined	43-117	<b>TOLERANCES</b>	
"Telephone line" defined	43-118	Bread, legal weight	10-113
<b>TEMPORARY JUSTICES</b>		Food put up in package form	10-117
Court of Appeals	11-205	Weights and measures, power of Commissioners of District to establish	10-127
<b>TENANTS IN COMMON</b>			
See <b>ESTATES</b>			
Accounting in partition	16-1301		
Action by or against for accounting	16-101		



<b>TON</b>	Sec.	<b>TRADE-MARKS AND TRADE-NAMES—Con.</b>	Sec.
"Long ton" defined	10-108	Labor union labels—Continued	
Number of pounds comprising	10-108	Nonassignable	48-401
<b>TORTS</b>		Penalties for violating registration law	48-403
Joinder of counts with contract counts	13-208	Registrants' right to damages and profits from unauthorized use	48-402
Settlement of claims against District	1-902	Unauthorized use of registered label prohibited	48-402
To the person, limitation of actions	12-201	Use or possession of counterfeits of registered labels prohibited	48-402
Wife's separate, husband not liable	30-208	Milk-beverage containers	48-301—48-307
<b>TOWERS</b>		Definitions	48-301
Fireproof constructions	5-404	Mark	48-301
Height, fireproof construction	5-405	Person	48-301
<b>TRACK ELEVATION</b>		Police court warrant on registrants' complaint	48-305
Baltimore and Ohio Railroad Company	7-1212	Possession of registered containers by unauthorized person evidences unlawful use	48-304
Grade crossings	7-1214, 7-1215	Registrants may bring tort actions	48-307
Cost of work, payment	7-1214	Registration	48-302
Existing crossings, elimination	7-1215	Filing description with District Court clerk	48-302
New streets constructed over or under tracks	7-1214	Filing sample of original package with District Court clerk	48-302
Use of underpass or viaduct by railroad, payment of share of cost	7-1215	Publication	48-302
<b>TRACTION COMPANIES</b>		Regulations for filing labels and trade-marks	48-306
See <b>COMMON CARRIERS; PUBLIC UTILITIES</b>		Sale of registered containers without owner's consent, penalty	48-303
Employers' Liability Act	44-401—44-405	Unauthorized use of registered containers, penalty	48-303
<b>TRACTORS</b>		"Vessel" defined	48-301
See <b>MOTOR VEHICLES</b>		Milk containers	48-201—48-211
<b>TRADE</b>		Acquiring title to registered marks and names	48-206
Married woman's right to engage in	30-208	Affidavit of publication	48-201
<b>TRADE ASSOCIATIONS</b>		Filing copy with health department	48-201
Income tax, when exempted	47-1502	Filing with District Court clerk	48-201
<b>TRADE-MARKS AND TRADE-NAMES</b>		Bottlers may register	48-201
Beverage bottles	48-101, 48-102	Containers subject to registration	48-209
Manufacturer may register	48-101	Defacing name on registered container prohibited	48-203
Registration	48-101	Distributors may register	48-201
Beverages allowed by law to be sold in bottles	48-101	"Person" defined	48-208
Contents	48-101	Proceedings to ascertain violations	48-205
Filing with District Court clerk	48-101	Registrants complaint in police court	48-205
Mineral water bottles	48-101	Search warrants	48-205
Publication	48-101	Prosecution of registration law violations	48-210
Trafficking in, without owner's permission, penalty	48-102	Refusal to surrender registered container evidences unlawful use	48-204
Use without owner's permission, penalty	48-102	Registrants' right to injunctive relief	48-211
Vendors may register	48-101	Complaint to District Court equity division	48-211
Dentistry, use in practicing prohibited, penalty	2-316	Three convictions are prerequisite	48-211
Forgery of, penalty	22-1402	Registration	48-201
Labor union labels	48-401—48-403	Contents	48-201
Authority to adopt	48-401	Filing copy with health department	48-201
Counterfeiting registered labels prohibited	48-402	Filing with District Court clerk	48-201
Fee for copies	48-401	Publication	48-201
Fee for registration	48-401	When complete	48-201
Filing drawing with District Court clerk	48-401	Registration under prior law, certificate to health department	48-207
Injunctive relief by registrants	48-402		
Action in District Court	48-402		
Restraining manufacture or use of counterfeits or colorable imitations	48-402		
Restraining sale of goods bearing unauthorized label	48-402		



TRADE-MARKS AND TRADE-NAMES—Con.		Sec.	TRAFFIC REGULATIONS—Continued		Sec.
Milk containers—Continued			Park traffic controlled by National Park Service		
Rights under prior registration laws pre-					40-613
served		48-207	Penalties, authority of Commissioners		40-603
Sellers may register		48-201	Possession of smoke screen device, penalty		40-610
Unauthorized use of registered contain-			Possession of vehicle equipped with smoke		
ers prohibited		48-202	screen device, penalty		40-610
Violation of registration law, penalty		48-210	Publication		40-603
No implied warranty when goods are sold			Public hacks, loitering, penalty		40-617
under trade name		28-1115	"Public highway" defined		40-602
Signature to negotiable instrument by trade			Reckless driving		40-605
name, liability		28-119	Definition		40-605
			Penalty		40-605
TRAFFIC REGULATIONS			Repeal and saving clause, traffic act		40-614
See MOTOR VEHICLES			Rules and regulations, Commissioners author-		
Arterial and boulevard highways		40-603	ized to make		40-603
Citing traffic act		40-601	Saving clause an amendment		40-609
Congressional tags		40-603	Separability clause, traffic act		40-615
Convictions under certain sections to be re-			Speeding		40-605
ported to Commissioners		40-612	Definition		40-605
Definitions		40-602	Penalty		40-605
Department of vehicles and traffic estab-			Taxicabs, loitering, penalty		40-617
lished		40-603	Titling and retitling vehicles, fees		40-603
Director of vehicles and traffic		40-603	"Traffic" defined		40-602
Appointment		40-603	Traffic lights		40-603
Compensation		40-603	Use of smoke screen, penalty		40-610
Responsible to Commissioners		40-603	"Vehicle" defined		40-602
District of Columbia Traffic Act		11-601,	TRAILERS		
		11-616, 11-617, 11-621, 11-623, 11-1407,	See MOTOR VEHICLES		
		40-301—40-303, 40-601—40-603, 40-605,	TRAINING SCHOOL FOR BOYS		
		40-609, 40-610, 40-612, 40-614, 40-615	See NATIONAL TRAINING SCHOOL FOR BOYS		
Driving while drugged, penalty		40-609	TRAINING SCHOOL FOR GIRLS		
Driving while drunk, penalty		40-609	See NATIONAL TRAINING SCHOOL FOR GIRLS		
Driving while under the influence of intoxi-			Board of Trustees abolished		3-101
cants, penalty		40-609	Powers and duties transferred to Board of		
Driving while under the influence of narcotics,			Public Welfare		3-122
penalty		40-609	TRANSFER OF CAUSES		
Fleeing from scene of accident		40-609	Special term of United States District Court		
Definition		40-609	TRANSFER VEHICLES		
Involving personal injury, penalty		40-609	License		47-2333
Involving property damage, penalty		40-609	Stands		47-2333
Garagemen to report cars involved in acci-			TRANSIENT MERCHANTS		
dents or struck by bullets		40-611	Inspectors of weights and measures, right to		
Immoderate rate of speed not dependent on			stop for purpose of making inspections or		
legal rate		40-608	tests		10-126
Inspections, authority of Commissioners		40-603	Weighing and measuring devices, duty to have		
Jurisdiction of police court		40-603	tested		10-103
Loitering by public cabs		40-617	TRAVERSES		
"Motor vehicle" defined		40-602	Affidavits in attachment and garnishment in		
Movement of traffic, authority of Commis-			proceedings		16-307
sioners		40-603	Garnishee's answers		16-317
Negligent homicide		40-606	Immaterial, harmless error		13-206
Definition		40-606	Return to writ of habeas corpus		16-807
Immoderate rate of speed not dependent			TREES		
on legal rate		40-608	Anacostia Park, nursery		
Included in manslaughter		40-607	Cutting down, injuring, destroying, penalty		
Penalty		40-606	22-3108—22-3110		
"Park" defined		40-602	Boundary trees		22-3109
Parking meters		40-616	On another's property		22-3108
Authority to install		40-616	On public grounds		22-3110
Cost		40-616			
Fees, collection and deposit		40-616			
Rules and regulations		40-616			
Parking zones for members of Congress		40-604			



**TRENCHES**

Cutting in highways and streets, permit required, exception	7-615
Penalty for violating law	7-616

**TRENTON STREET**

Extension, use of land owned by United States authorized	7-126
--	-------

**TRESPASS**See **CRIMINAL OFFENSES**

Capitol grounds, public travel	9-106
Forcible entry and detainer, Municipal Court jurisdiction	11-735
Municipal Court jurisdiction	11-704

**TRIAL BOARDS**See **POLICE DEPARTMENT**

Appointment, powers, and duties, appeals	4-122
--	-------

**TRIALS**

Mandamus	16-1005
Municipal Court	11-715
New trial, motion for, granting	13-221
Pretrial settlement	
Small Claims and Conciliation Branch, Municipal Court	11-808
Probate Court, issues not relating to wills	11-517
Trial by court	
Municipal Court	11-717
Police Court	11-616
Trial by jury	
Attachment and garnishment	16-316
Mandamus proceedings	16-1006
Municipal Court	11-715
Quo warranto	16-1607
Small Claims and Conciliation Branch, Municipal Court	11-818
Waiver in Police Court	11-616

**TRUCK LINES**

Employers' liability act	44-401—44-405
--------------------------	---------------

**TRUST ACCOUNTS**See **BANKS AND OTHER FINANCIAL INSTITUTIONS****TRUST COMPANIES**See **BANKS AND OTHER FINANCIAL INSTITUTIONS**

Excise tax	47-1701
------------	---------

**TRUST DEEDS**

Acknowledgment	45-601
Conveyance by non compos mentis trustee	45-620
Creditor buying at sale, rights	45-617
Deficiency decree in personam on sale of property	45-616
Enforcement, defenses against	45-612
Estate of trustee, construing	45-603
Executions	45-601
Expense and commission on sale	45-618
Form	45-301
Infant trustee	
Compelling conveyance by	45-609
May convey under court order	45-608
Joint trustees, survival of title and trust	45-604
Married women authorized to execute	30-204
Recording	45-601, 45-602
Release after death of trustee	45-619
Replacement of deceased new trustee	45-613
Terms of sale of property	45-615

Sec.

**TRUST DEEDS—Continued**

Sec.

Trustee	
Decease, appointment of new trustee	45-611
Failing to act, appointment of new trustee	45-614
Takes qualified fee simple	45-603

**TRUSTEES**See **CORPORATIONS FOR PROFIT**

As fiduciary under income tax law	47-1543
Assignments for benefit of creditors	28-2604
Bankruptcy trustees, corporate income tax returns	47-1516
Bond	28-2403
Judgment on	28-2403
Not discharged by trustee making payment to self in another capacity	28-2407
Corporate income tax returns	47-1516
Corporate stock, voting	29-221
Deed under decree, form	45-301
Form of deed under decree	45-301
For religious societies	29-501—29-516
Infant trustees under trust deed	
Compelling conveyance by	45-609
May convey under court order	45-608
Joint trustees under trust deed, survival	45-604
Married woman's separate estate	30-204
Personally exempt from stockholder's liability	29-220
Real property, assessment in name of	47-701
Religious societies	29-502—29-510

**TRUSTS**See **NEGOTIABLE INSTRUMENTS**

Application of income tax	47-1524
Deed of trust for particular purposes, form	45-301
Effect of statute of frauds	12-303
Included in definition of "individual" under income tax law	47-1543
Income tax return by fiduciary	47-1523
Statute of uses	45-1201
Trustees	12-403, 16-1907
Deed under decree, form	45-301
Fraudulent conveyances, suits to vacate	12-403
Set-off	16-1907
Uses and trusts	45-1201—45-1203

**TUBERCULOSIS**See **HOSPITALS AND ASYLUMS****TUGBOATS**

Operating on Potomac River	7-509
Approval of dimensions by Secretary of War	7-509
Passage under bridges without use of draw	7-509
Smokestack construction	7-509

**TUITION**

Children of non-residents, admission to schools	31-301—31-305
---	---------------

**TURKISH BATH ESTABLISHMENTS**

License	47-2311
Approval by major and superintendent of police	47-2311
Fee	47-2311
Revocation for unlawful acts	47-2311
Unlawful acts enumerated	47-2311

**TURNIPS**

Sale by bunch authorized	10-115
--------------------------	--------



TYPEWRITERS	Sec.	UNEMPLOYMENT COMPENSATION—Con.	Sec.
Book typewriters, authorized by surveyor	1-609	Determination of claims—Continued	
Trading in old machines	1-819	Immunity of witnesses	46-311
<b>ULTRA VIRES</b>		Record of proceedings, disputed claims	46-311
Dissolution of corporation for ultra vires acts	29-719	Review in District Court	46-312
Injunction against corporations to restrain ultra vires acts	29-725	Witness fees	46-311
<b>UNCLAIMED FUNDS</b>		Determining rate of contribution	46-303
See PROPERTY CLERK		Disposition of fines	46-320
Municipal Court	11-710	Disqualification for benefits	46-310
Police Court	11-626	Discharge for misconduct	46-310
<b>UNDERPASSES</b>		Failure to apply for or accept work	46-310
Acquisition of necessary land	7-1215	Leaving work without good cause	46-310
Cedar Street, use by street railway company, payment of share of cost	7-519	Minor failing to take recommended vocational training	46-310
Chestnut Street Underpass, construction, division of cost	7-523	"District" defined	46-301
Construction and maintenance, payment of share of cost	7-1214, 7-1215	District Unemployment Compensation Board	46-315
Construction and maintenance under railroad	7-1214, 7-1215	Compensation of members	46-315
Eminent domain proceedings	7-1215	Duties and authority	46-302—46-304, 46-308—46-318, 46-321
Lighting, payment for by street and steam railroads	7-708, 7-709	Establishment	46-315
Van Buren Street	7-517, 7-518	Executive officer	46-315
Closing of grade crossing	7-518	Members	46-315
Use by street railway company, payment of share of cost	7-517	Qualifications of members	46-315
<b>UNEMPLOYMENT COMPENSATION</b>		District unemployment fund	46-302
Administration	46-313	Duration of benefits	46-307
Amount and duration of benefits	46-307	"Earnings" defined	46-301
Annual report to Congress	46-313	Available and registered for work	46-309
Appropriations	46-305	Claim filed	46-309
Assignment of right to benefit invalid	46-318	Minimum wages for base period	46-309
"Base period" defined	46-301	Physically able to work	46-309
Benefits, amount and duration	46-307	Unemployed during waiting period	46-309
"Benefits" defined	46-301	Unemployment not due to strike or jurisdictional labor dispute	46-309
Benefits exempt from levy, execution or attachment	46-318	Eligibility for benefits	46-309
"Benefit year" defined	46-301	Employer contributions	46-303, 46-304
"Board" defined	46-301	Determining rate	46-303
Board not to charge fees for claims, penalty	46-318	Due date	46-304
Changes in rates of contribution or benefits	46-313	Interest on late payments	46-304
Charging excessive counsel fee, penalty	46-318	Method of paying	46-304
Civil service	46-313	Priority in dissolution and insolvency	46-304
Cooperation with Federal Social Security Board	46-313	Refunds	46-304
Court review	46-312	Employer deducting contributions from wages, penalty	46-318
Definitions	46-301	"Employer" defined	46-301
"Dependent relative" defined	46-301	Employers' records	46-317
Dependent's allowance	46-307	Employers' reports	46-317
Deposit in unemployment trust fund	46-306	Employer to post eligibility regulations	46-309
Determination of claims	46-311	Employer violating act, penalty	46-319
Appeal examiner	46-311	"Employment" defined	46-301
Appeal from determining agent	46-311	Employment exempted	46-301
Appeal from District Court to Court of Appeals	46-312	"Employment office" defined	46-301
Appeal tribunal	46-311	Fraud in obtaining benefits, penalty	46-319
Authority to administer oaths	46-311	Liability of benefits for debts	46-318
Authority to issue subpoenas	46-311	Limitation on counsel fees	46-318
Authority to take depositions	46-311	Method of paying benefits	46-308
Decision on appeals	46-311	"Month" defined	46-301
Failure to give testimony, penalty	46-311	Payment of administrative expense	46-314
		Payment of benefits	46-308
		Penalties	46-319
		Prosecutions	46-321
		Protection of rights and benefits	46-318
		Recipients' names, furnishing to public work agencies	46-317
		Reciprocal agreements with states	46-316
		Records and reports	46-317



UNEMPLOYMENT COMPENSATION—Con.		Sec.	UNITED STATES—Continued		Sec.
Regulations		46-313	Federal laws applicable to District, reference		pp. 679, 680
Representation of board in court		46-321	Property exempted from District taxation		47-803
Reservation of right to amend or repeal		46-322	Property of in city of Washington, liable to taxation from day of sale		47-409
Saving clause		46-323	Property of in District, valuation		47-722, 47-723
Segregation of employers into classes		46-303	Suing as party plaintiff in District Court		11-306
Separability of provisions		46-323	Limitation of actions, exception		12-204
Short title of act		46-324			
Standards of classification, publication		46-303			
Transfer of certain funds to railroad unemployment insurance account		46-301			
"Unemployed" defined		46-301			
Unemployment benefit table		46-307			
"Unemployment trust fund" defined		46-301			
"Valid claim" defined		46-301			
"Wages" defined		46-301			
Waivers of rights invalid		46-318			
"Week" defined		46-301			
When person is deemed unemployed		46-301			
UNIFORMED FORCES			UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA		
Discriminating against		22-3415	See DISTRICT ATTORNEY		
UNIFORM LAWS			UNITED STATES CLERK		
Bulk sales law		28-1701—28-1705	District Court		11-401
Fiduciaries Act		28-2301—28-2314			
Firearms or pistol act		22-3201—22-3216			
Fresh pursuit law		23-501—23-504			
Narcotic drugs		33-401—33-425			
Negotiable instruments law		28-101—28-1001			
Sales act		28-1101—28-1601			
Warehouse Receipts Act		28-1801—28-2205			
UNIFORMS			UNITED STATES COMMISSIONER		
Fire Department		4-406	Fees and costs		11-1511
Annual clothing allowance		4-406	Record book in criminal proceedings		11-1511
Park police		4-204	Search warrants for narcotic drugs		33-414
Police Department members		4-130, 4-131			
War Department furnishing worn mounted equipment to police		4-181			
White House police		4-303			
UNION			UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA		
Engine-house, use authorized		4-412	See COURT OF APPEALS		
UNION LABELS			UNITED STATES DAUGHTERS OF 1812		
See TRADE-MARKS AND TRADE-NAMES			Property exempted from taxation		47-826
UNION STATION			UNITED STATES DISTRICT COURT		
Compensation for use, determination by United States District Court		7-1213	See ATTACHMENT AND GARNISHMENT; COURT OF APPEALS; JUVENILE COURT; MARSHAL; MUNICIPAL COURT; POLICE COURT		
Joint use by railroad		7-1213	Appeals from public utilities commission orders		
UNIONTOWN			Precedence over other civil matters		43-705
Name changed to Anacostia		1-108	Procedure		43-705
UNITED STATES			Right to appeal		43-705
See BONDS AND UNDERTAKINGS; EMINENT DOMAIN			Appeals to Court of Appeals		17-101, 17-102
Bonds to United States		28-2406	Apportionment of expenses between District and United States		11-331
Claims against, not assignable		28-2503	Assistant clerks		11-312, 11-401
Closing and readjusting streets, property belonging to United States, disposition made of		7-401	Appointment by clerk		11-401
Closing or vacation of streets, sale of lands belonging to United States, disposition of proceeds		7-325, 7-330	Compensation		11-401
Eminent domain proceedings, alleys or minor streets, sale of lands of United States, surplus paid into Treasury		7-325, 7-330	Powers and duties		11-401
			Power to appoint		11-312
			Signing of documents, form		11-401
			Associate justices		11-301
			Attorney General, control over building		11-329
			Attorneys		11-1301—11-1303
			Admission to bar		11-1301
			Censure		11-1302
			Disbarment, conviction of crime		11-1303
			Appeal, suspension pending		11-1303
			Reversal on appeal, modifying		11-1303
			Reversal on appeal, vacating		11-1303
			Disbarment, procedure for		11-1303
			Expulsion		11-1302
			Revocation of admission		11-1302
			Suspension		11-1302
			Auditor, appointment		11-312
			Barbers Registration Law, refusal of certificate, appeal		2-1110
			Board of Examiners and Registrars of Architects, disobedient witnesses, punishment for contempt		2-1029
			Board of Podiatry Examiners, disobedient witnesses, punishment for contempt		2-703



UNITED STATES DISTRICT COURT—Con.		Sec.	UNITED STATES DISTRICT COURT—Con.		Sec.
Bonds and undertakings		28-2403	Eminent domain proceedings		11-301
Building lines, establishment, eminent domain, jurisdiction		5-202, 5-203	Enforcement of District liens for real property taxes		47-1011-47-1014
Calling justices to sit with Court of Appeals		11-205	Equitable jurisdiction		11-306
Certiorari, power to issue writ		11-315	Equity Court term		
Chief Justice		11-301	Attachment of persons to enforce decrees		11-326
Assignment of judge to hear condemnation cases		11-301	Commitment for contempt to enforce decree		11-326
Circuit Court term, common-law civil cases tried and determined		11-316	Crier, appointment for		11-312
Clerk		11-401	Delivery of chattels, order for, enforcement		11-328
Administering oaths		11-402	Enforcement of decrees		11-326
Appointment		11-403	Fieri facias, issuance to enforce decrees		11-326
Authority to take acknowledgment of deeds		45-402	Interlocutory decrees, enforcement		11-327
Bond		11-401	Jurisdiction		11-325
Deeds, taking acknowledgments		11-402	Mandatory injunction to enforce decrees		11-326
Deeds under sales enforcing liens for real property taxes		47-1014	Messenger for, appointment		11-312
Expenses		11-403	Money judgment, imprisonment to enforce payment restricted		11-326
Hospital lien docket to be provided		38-305	Rules in practice and procedure		11-325
Jury box, custody of		11-1404	Sequestration of property to enforce decree		11-326
Marriage, duties regarding		30-108-30-115	Special term of United States District Court		11-311
Oath		11-401	Expenses, estimates to be included in District budget		47-204
Power to appoint		11-312	Fees and costs		11-1509
Regulating filing of milk-beverage container registrations		48-306	Apportionment between District and United States		11-330
Salary		11-403	Fiduciary's bond and undertaking		28-2403
Common-law jurisdiction		11-306	Forfeiture, jurisdiction		11-306
Copyrights, jurisdiction of		11-307	General Court term		11-310, 11-312
Corporations			Admission of persons to bar		11-312
Dissolution by quo warranto		29-719	Assignment of judges to special terms		11-312
Voluntary dissolution		29-701	Assistant clerks, appointment		11-312
Criminal Court term			Auditor, appointment		11-312
Attachés prohibited from receiving pay from professional bondsmen		23-603	Cases not heard		11-312
Bail after regular hours, person authorized to take		23-610	Censure, suspension or expulsion of members of bar		11-312
Bill of exceptions		11-322	Clerk, appointment		11-312
Clerk to attend sessions		11-323	Criers for special terms, appointment		11-312
Concurrent jurisdiction with Police Court		11-322	Messengers for special terms, appointment		11-312
Crier, appointment for		11-312	Municipal court judge, hearing of charges against		11-312
District Attorney to attend sessions		11-323	Number of judges sitting		11-310
Exceptions to ruling of presiding justice		11-322	Officers and employees of court, appointment		11-312
Jurisdiction		11-322	Open at all times for transaction of business		11-312
Marshal to attend court		11-323	Powers in general		11-312
Messenger, appointment for		11-312	Regulation of special term		11-312
Special term of United States District Court		11-311	Rules, effective date of		11-312
Transfer of cases, certification		11-314	Rules of practice and procedure, power to prescribe		11-312
Criminal jurisdiction		11-306	Grand juries, impaneling		11-1407
Deemed court of United States		11-305	Habeas corpus, power to issue writ		11-315
Dentistry, license to practice, revocation or suspension		2-311, 2-312	Healing arts		
Dissolving public utility corporations for violation of antimerger law		43-502	Licenses to practice, suspension or revocation, jurisdiction		2-123
District Court term		11-311, 11-312, 11-324	Refusal of license to practice, review		2-129
Crier for, appointment		11-312	Unlawful practice, injunction, procedure		2-132
Eminent domain proceedings, jurisdiction		11-324	Injunctions, power to issue		11-315
Jurisdiction		11-324			
Messenger for, appointment		11-312			
Docket, separate, for feeble-minded cases		32-623			



UNITED STATES DISTRICT COURT—Con.		Sec.
Insanitary buildings, condemnation order, vacation or modification	5-614	
Interest on principal debt, when included in judgments	28-2707	
Interlocutory order, enforcement	11-327	
Judges, powers in general	11-309	
Authority to take acknowledgment of deeds	45-402	
Jurisdiction	11-301	
Appeals from public utilities commission orders	43-705	
Copyright cases	11-307	
Crime	11-306	
Divorce	16-416	
Injunctions against medical and dental colleges	31-904	
Law and equity	11-306	
Patent Law cases	11-307	
Penalties and forfeitures	11-306	
Residence of parties	11-306	
Searches and seizures	11-306	
Jurors, fees and costs	11-1512	
Jury Commission, appointment of	11-1401	
Library of Congress, withdrawal of books	11-102	
Mandamus, compelling filing of personal property tax returns	47-1209	
Marshal, executing sentences of courts-martial	36-708	
Ne exeat, power to issue writ	11-315	
Nurses		
Denial of registration or reregistration, review	2-406	
Revocation or suspension of certificate, jurisdiction	2-407	
Oath of justices	11-303	
Oaths, justices authorized to administer	11-304	
Petition for admission to District Training School	32-608	
Petition for voluntary dissolution of corporation	29-701	
Petit juries, impaneling	11-1407	
Podiatrist, revocation or suspension of license, jurisdiction	2-707, 2-708	
Probate Court term, jurisdiction and powers in general	11-501-11-520	
Appeal, proceedings not stayed, when	11-511	
Arbitration	11-520	
Award conclusive	11-520	
Consent of parties	11-520	
Clerk, register of wills	19-409	
Compelling performance of duties	11-514	
Revocation of letters	11-514	
Summons	11-514	
Decree admitting will to probate as evidence	11-519	
Depositions	11-519	
Enforcement of judgments and decrees	11-516	
Enforcement of orders	11-516	
Exceptions	11-519	
Fees and costs	11-1503	
Investment of funds	11-513	
Courts power to order	11-513	
Failure to obey order of court, revocation of letters	11-513	

UNITED STATES DISTRICT COURT—Con.		Sec.
Probate Court term, jurisdiction and powers in general—Continued		
Issues not relating to wills	11-517	
Notice of trial	11-517	
Time of trial	11-517	
Judgment for costs		
Authority to vendor	11-518	
Execution	11-518	
Judgment or decree, enforcement by attachment, sequestration	11-512	
Jurisdiction	11-501	
Limitation	11-512	
Jurisdiction, plenary	11-503	
Wills	11-503	
Admission to probate	11-503	
Devising District of Columbia real estate	11-503	
Presented for probate	11-503	
New trial	11-519	
Orders, enforcement by attachment, sequestration	11-512	
Orphans' Court, replaces	11-501	
Plenary proceedings	11-509	
Attachment and sequestration	11-510	
Costs	11-510	
Issues	11-510	
Judgment or decree	11-510	
Regulation	11-509	
Powers	11-501, 11-504	
Enforce distributions	11-504	
Enforce rendition of inventories and accounts	11-504	
Jurisdiction over wills	11-504	
Letters ad colligendum, grant and revocation	11-504	
Letters of administration, grant and revocation	11-504	
Letters of guardianship, grant and revocation	11-504	
Letters testamentary, grant and revocation	11-504	
Not exclusive of equity court	11-504	
Settlement of accounts prima facie evidence	11-504	
Property in hands of property clerk, administration	4-159	
Religious societies, appointing trustees to receive conveyances	29-514	
Requiring foreign public utility corporation to dispose of securities held in violation of antimerger law	43-502	
Requiring holding companies to dispose of utility stocks held in violation of antimerger law	43-502	
Review of unemployment compensation cases	46-312	
Revocation of letters, accounting, failure to make	11-515	
Seal for court	11-505	
Seal for register of wills	11-505	
Sessions, weekly	11-502	
Special term of United States District Court	11-311, 11-501	



UNITED STATES DISTRICT COURT—Con.	Sec.	UNITED STATES DISTRICT COURT—Con.	Sec.
Probate Court term, jurisdiction and powers in general—Continued		Trial by jury of civil cases—Continued	
Summons		Submission by parties of names to be omitted from panel	11-319
Failure to appear, penalty	11-506	Union Station, use by railroad, compensation, determination	7-1213
Failure to appear, sequestration, accounting	11-508	Witnesses	
Allowance	11-508	Before dental board, punishment for contempt	2-304
Bonds	11-508	Fees and costs	11-1512
Return of property	11-508	Writs, power to issue	11-315
Failure to make return	11-507		
Failure to serve process	11-507	UNITED STATES EMPLOYEES' COMPENSATION COMMISSION	
Power to issue	11-506	Cooperation on vocational rehabilitation	31-503
Return	11-508		
Service	11-507	UNITED STATES GOVERNMENT EMPLOYEES	
Witnesses, refusal to give evidence, penalty	11-506	Eligible for jury service	11-1420
Probation officers, appointment	24-101		
Prohibition, writ of, power to issue	11-315	UNITED STATES MARSHAL	
Quo warrant, power to issue writ	11-315	See MARSHAL	
Reports of Circuit Courts of Appeal, copies furnished judges	11-206	UNITED STATES NAVAL OBSERVATORY	
Salaries	11-302	See NAVAL OBSERVATORY	
Associate justices	11-302	UNITED STATES PARK POLICE	
Chief Justice	11-302	See PARK POLICE	
Seizure, jurisdiction	11-306		
Special terms	11-310	UNITED STATES PUBLIC HEALTH SERVICE	
Absence of judge assigned to term	11-314	Cooperation on vocational rehabilitation	31-503
All cases heard at special term	11-313		
Assignment of judges	11-312	UNITED STATES SOLDIERS' HOME	
Certification and transfer of cases from one judge to another	11-314	Michigan Avenue, abandoned portion, transfer in part to home	7-129
Circuit Court term	11-311, 11-316—11-321	Michigan Avenue relocated, lands transferred to Home	7-127
Criers for, appointment	11-312	Vacation of part of grounds for street purposes authorized	7-127, 7-128
Criminal Court term	11-311, 11-322		
Declared terms of United States District Court	11-313	UNIVERSITIES	
District Court term	11-311, 11-324	See INSTITUTIONS OF LEARNING	
Equity Court term	11-311, 11-325		
Judgments and decrees deemed those of United States District Court	11-313	UNLAWFUL ASSEMBLY	
Messengers for, appointment	11-312	Definition and penalty	22-1107
Number of judges sitting	11-310		
Probate Court term	11-311	UNSAFE STRUCTURES	
Regulation by general term	11-312	See INSANITARY BUILDINGS	
Writs, power to issue	11-315	Abatement as nuisances	5-504
Streets and other ways, eminent domain proceedings, jurisdiction	7-202	Abandoned vehicles	5-504
Superior Court of District	11-101	Accumulations of junk	5-504
Trial boards of police and fire departments, compelling attendance of witnesses	4-603	Assessment of costs against property	5-504
Trial by court of civil cases	11-317, 11-318, 11-321	Failure to abate after notice, penalty	5-504
Bill of exceptions	11-318	Interest on assessment against property	5-504
Sealing, British Statute	11-321	Remedying of condition by Commissioners	5-504
Exceptions to rulings of court	11-318	Uncovered wells, cistern, for excavation	5-504
Findings, general or special, effect	11-317	Building Inspector remedying conditions	5-501, 5-503
Waiver of jury	11-317	Assessment of cost against property	5-503
Trial by jury of civil cases	11-319, 11-320	Collection of assessment	5-503
Bill of exceptions	11-320	Immediate action required	5-501
Challenge of jurors, right preserved	11-319	Interest on unpaid assessment	5-503
Exception	11-320	Liability of lessee or other persons to owner	5-503
Impaneling and swearing of struck jury	11-319	No immediate action required	5-503
Right to examine jurors, voir dire	11-319	Report of cost and expenses of work	5-503
Striking of names by clerk	11-319	Failure to remedy condition after notice	5-502, 5-503
Struck jury, method of selecting	11-319	Barring owner or interested person from premises	5-503



<b>UNSAFE STRUCTURES—Continued</b>		<b>Sec.</b>	<b>VAN BUREN STREET UNDERPASS</b>	<b>Sec.</b>
Failure to remedy condition after notice—Con.			Closing of grade crossing	7-518
Building inspector rendering structure or excavation safe	5-503		Use by street railway company, payment of share of cost	7-517
No immediate danger, survey by disinterested persons	5-502		<b>VANDALISM</b>	
Report of committee of disinterested persons	5-503		Capitol grounds, injury to grounds or structures or shrubbery prohibited	9-109
Ten-day period allowed owner or interested person	5-503		Criminal offense	22-3112
Immediate action required, duty of inspector of buildings	5-501		<b>VANITY SHOPS</b>	
Notice to remedy condition	5-501, 5-504		Licenses	47-2310
Failure to comply with notice, penalty	5-504		<b>VARIANCE</b>	
Time limit for remedying condition after notice	5-501		After verdict	13-314
Report of unsafe conditions	5-501		<b>VARNUM STREET VIADUCT</b>	
Buildings, staging, or other structure	5-501		Use by street railway company, payment of share of cost	7-515
Examination of structure by Building Inspector	5-501		<b>VAULTS</b>	
Survey by three disinterested persons	5-502		Use of space under sidewalk, rental	7-901
Appointment of jurors	5-502		<b>VEGETABLES</b>	
Failure to remedy condition after notice	5-502		See <b>FOOD AND DRUGS</b>	
Immediate action unnecessary	5-502		Baskets, standard sizes	10-115
Report	5-503		Hampers, dimensions	10-115
			Sale by bunch authorized	10-115
			Shelled beans, standard container	10-115
			Shelled peas, standard container	10-115
			Standard containers	10-115
<b>USED GOODS DEALERS</b>			<b>VEHICLES</b>	
See <b>SECOND-HAND DEALERS</b>			See <b>MOTOR VEHICLES</b>	
<b>USE OF PROPERTY</b>			<b>VEHICLES FOR HAULING</b>	
See <b>ZONING REGULATIONS</b>			License	47-2333
<b>USURPATION</b>			Stands	47-2333
Usurpation of office, remedy	16-1601—16-1611		<b>VENDERS</b>	
<b>USURY</b>			Badge	47-2336
See <b>INTEREST AND USURY</b>			Definition	47-2336
Credit of unlawful interest on principal debt	28-2705		Exemption from license	47-2336
Definition and penalty	28-2703		License	47-2336
Legal interest rate	28-2701		<b>VENDING MACHINES</b>	
Recovery of unlawful interest paid	28-2704		License	47-2319
<b>VACATION</b>			<b>VENTILATION</b>	
Alleys and minor streets, sale of land, distribution of proceeds	7-325, 7-330		Houses, regulations, Commissioners' power to adopt	1-725
Employees of District	1-312—1-314		Sewers, inspection by plumbing inspector	1-727
<b>VACATION PERMITS</b>			Shaft, height, fireproof construction	5-405
See <b>CHILD LABOR</b>			<b>VENUE</b>	
<b>VACCINATION</b>			Nonresidents, suing within District	11-306—11-308
Smallpox	31-1102		General rule	11-308
<b>VAGRANCY</b>			One of parties resident of District	11-306
Definition	22-3301		Patent Law, infringement cases	11-307
Houses of prostitution	22-2702		<b>VERDICTS</b>	
Frequenter deemed vagrant	22-2702		Defects in pleadings found after verdict	13-316
Inmate deemed vagrant	22-2702		Ejectment	16-516
Prosecutions	22-3301		Eminent domain, land for streets	7-206
Security	22-3301		Alleys or minor streets, opening, widening, or straightening	7-315, 7-317
<b>VALIDITY</b>			Objections and exceptions	7-209
Suits to determine validity of marriage	16-422		Partial vacation of verdict, effect	7-209
<b>VALUE</b>			Time allowed for exceptions	7-209
Definition, negotiable instruments law	28-101, 28-202		Vacation of verdict, power of court	7-209
			Mistakes found after verdict, rectifying	13-315



VERIFICATION		Sec.	VETERINARIANS—Continued		Sec.
Defendant's answer in mandamus		16-1003	Refusal of license after examination—Con.		
Dilatory pleas		13-210	Compensation of members of Board of Review		2-806
Non est factum		13-211	Deposit of applicant, appeal taken		2-806
<b>VETERANS</b>			Method of taking appeal		2-806
Benefits, when exempted from income tax	47-1504		Time allowed for appeal		2-806
<b>VETERINARIANS</b>			Revocation or suspension of licenses		2-810
Applications for license	2-803		Appeal to Court of Appeals		2-810
Educational requirements	2-803		Complaint		2-810
Numbered consecutively	2-803		Cost of proceedings, payment		2-810
Preservation	2-803		Ground		2-810
Proof of qualifications	2-803		Hearings before board		2-810
Qualifications	2-803		Procedure		2-810
Board of Examiners	2-801, 2-802		<b>VIADUCTS</b>		
Annual report	2-802		Acquisition of necessary land		7-1215
Appointment	2-801		Construction over railroad and canal rights of way		7-502
Bond, right to require of officers	2-802		Collection and deposit of cost of work		7-502
Compensation of members	2-803		Lien of cost		7-502
Expenses of administering law, payment	2-803		Construction under or over railroads, payment of share of costs	7-1214, 7-1215	
Meetings	2-802		Eastern Avenue Viaduct, use by street railway, payment of share of cost		7-515
Oaths, power of secretary to administer	2-802		Eminent domain proceedings		7-1215
President	2-802		Fern Street Viaduct	7-515, 7-516	
Qualifications	2-801		Closing of grade crossings		7-516
Removal of member for cause	2-801		Use by street railway, payment of share of cost		7-515
Rules and regulations, power to adopt	2-802		Michigan Avenue Viaduct	7-520—7-522	
Secretary	2-802		Closing of grade crossing	7-520, 7-522	
Term of office	2-801		Construction authorized		7-520
Vacancies filled for unexpired term	2-801		Division of cost between District and Baltimore and Ohio Railroad		7-520
Vice-president	2-802		Use by street railway company, payment of share of cost		7-521
Definition under uniform narcotic drugs law	33-401		Monroe Street Bridge, use by street railway, payment of share of cost		7-510
Display of license	2-807		Pennsylvania Railroad Company required to construct over proposed street		7-1227
Employed by Federal government, exemption from law	2-809		Railroads, construction and maintenance over	7-1214, 7-1215	
Examination for license, held quarterly	2-803		Varnum Street Viaduct, use by street railway, payment of share of cost		7-515
Existing practitioners, exemption from examination	2-805		<b>VIEW</b>		
Fees under Licensing Law	2-803, 2-805		Eminent domain, land for streets, view of premises by jury		7-206
Application for license	2-803		<b>VINCENT STREET</b>		
Licensing of practitioner exempt from examination	2-805		Abandonment authorized		7-123 note
Fire Department	4-404		<b>VIRGINIA</b>		
Inspection of place of business	2-807		Land for park purposes, acquisition by District		8-102
Issuance of licenses	2-802, 2-803		Retrocession of Battery Cove by District	1-101 note	
Narcotic drugs, professional use	33-409		<b>VITAL STATISTICS</b>		
Narcotics, prescription	2-610, 2-611		Birth reports	6-301—6-304	
Content	2-610		Acknowledgment of receipt of		6-301
Restrictions on right to issue	2-611		Altering or falsifying prohibited		6-302
Official register of Board of Examiners, content	2-802		Contents of		6-301
Outside practitioners, incidental practice within District, exemption	2-809		False or fictitious transcripts of record prohibited		6-302
Penalty for violating regulatory law	2-810—2-812		False reports prohibited		6-302
Aiders and abettors	2-810		Filed with health officer		6-303
Prosecution by corporation counsel	2-812				
Persons exempted from regulatory law	2-809				
Pharmacy Law, exception from	2-601				
"Practicing veterinary medicine" defined	2-808				
Practitioners from other states, licensing, reciprocity	2-804				
Refusal of license after examination	2-806				
Appeal to Commissioners of District	2-806				
Board of Review, appointment, re-examination	2-806				



**VITAL STATISTICS—Continued****Birth reports—Continued**

Illegitimate children, identity of parents, disclosure unnecessary	6-301
Inspection of records	6-303
Midwives, duty to report	6-301
Name of child, reporting	6-301
Part of public records	6-303
Penalties for violating law requiring	6-304
Each week's delay separate and distinct offense	6-304
Information filed by corporation counsel	6-304
Prosecutions in Police Court	6-304
Use of reports in evidence	6-304
Physicians, duty to report	6-301
Publication of abstracts and analysis of data	6-303
Stillbirths, when unnecessary to report	6-301
Time limit for making	6-301
Health officer, enforcement of regulations	6-102

**VOCATIONAL REHABILITATION**See **EDUCATION****VOLUNTEER FIRE ORGANIZATIONS**

Use of equipment of regular department	4-411
--	-------

**VOLUNTEER SERVICES**

Acceptance by District prohibited, exception	1-215
Medical services, acceptance by Commissioner	1-215 note

**WAGES**See **MINIMUM WAGE LAW**

Laborers and mechanics on public buildings and works	1-815
Determination of prevailing wage	1-815
Prevailing wage rate paid	1-815
Suspension of prevailing wage, national emergencies	1-815
Minimum wage law	36-401—36-422

**WAIVER**

Certified public accountant requirement	2-904
Jury in civil cases	11-317
Negotiable instruments, benefit of law for protection of obligor	28-106
Notice of dishonor	28-721, 28-722
Embodied in instrument, effect	28-722
Written above signature of indorser, application	28-722
Pleading over does not waive demurrer	13-209
Protest of instrument	28-723
Presentment and notice of dishonor waived	28-723

**WALBRIDGE PLACE**

Twentieth Street Northwest, name changed	7-107 note
--	------------

**WAR DEPARTMENT**

Worn mounted equipment, furnishing to police	4-181
--	-------

**WAREHOUSE RECEIPTS**

"Action" defined	28-2203
Adverse claims to goods	28-1910
Defense to action for failure to deliver, limitation	28-1912

**WAREHOUSE RECEIPTS—Continued****Adverse claims to goods—Continued**

Excuse for nondelivery, by warehouseman	28-1911
Warehouseman allowed reasonable time to determine validity	28-1911
Altered receipts	28-1906
Liability of warehouseman	28-1906
Attachment or levy upon goods	28-1919, 28-1920
Attachment of receipts by creditor	28-1920
Negotiable receipts outstanding	28-1919
Transferred nonnegotiable receipts outstanding	28-2006
Citation of act	28-2205
Definitions of terms used	28-2203
"Delivery" defined	28-2203
Delivery of goods by warehouseman	28-1901—28-1904
Cancellation of receipts	28-1904, 28-1905
Duty to deliver on demand	28-1901
Failure to cancel negotiable receipts, liability	28-1904
Failure to deliver goods, burden to prove lawful excuse	28-1901
Liability for misdelivery	28-1903
Lost or destroyed receipts	28-1907
Notice not to deliver goods, liability	28-1903
Offer to acknowledge delivery of goods	28-1901
Offer to satisfy charges made	28-1901
Offer to surrender receipts made	28-1901
Persons entitled to receive goods	28-1902
Prohibition against claiming title in himself	28-1909
Right to require surrender of receipts	28-1919
Unpaid seller, surrender of receipt for cancellation	28-2013
Duplicate receipts	28-1806
Liability of warehouseman for failure to mark	28-1806
Marking as duplicates required	28-1806
Warranties of warehouseman	28-1903
Duress inducing negotiation, effect	28-2011
Duty to keep goods separate	28-1915
Expense and purpose of separation	28-1915
Essential requirements	28-1802
Fraudulent negotiation, effect	28-2011
Fungible goods	28-1916
Apportionment among owners	28-1916
Definition	28-2203
Liability of warehouseman to depositors	28-1917
Warehouseman's right to mingle	28-1916
General laws, when applicable	28-2201
"Goods" defined	28-2203
Hazardous goods, sale by warehouseman	28-1928
"Holder" defined	28-2203
Holder of negotiated receipts	28-2005
Extent of title acquired in goods	28-2005
Right as against warehouseman	28-2005
Holder of transferred nonnegotiable receipts	28-2006
Extent of title acquired in goods	28-2006
Loss of goods through attachment or levy	28-2006
Notice given warehouseman, effect	28-2006
"In good faith" defined	28-2203



WAREHOUSE RECEIPTS—Continued	Sec.	WAREHOUSE RECEIPTS—Continued	Sec.
Interpleader of claimant	28-1910	Outstanding receipts excepted from act	28-2204
Interpretation of law to produce uniformity	28-2202	"Owner" defined	28-2203
Judicial proceedings affecting title	28-1918	Partial delivery of goods, cancelation or nota-	
Liability for care of goods	28-1914	tion on receipts	28-1905
Duty to exercise reasonable care	28-1914	Penalties	28-2101—28-2106
Lien of warehouseman	28-1921—28-1930	Delivery of goods without obtaining ne-	
Charges and expenses giving rise to lien	28-1921	gotiable receipts	28-2105
Charges prior to storage, listing on nego-		Encumbered goods, negotiation of re-	
tiable receipts required	28-1924	ceipts	28-2106
Goods subject to lien	28-1922	Failure to mark receipt as duplicate	28-2103
Loss of lien	28-1923	False statements in receipts	28-2102
Negotiable receipts issued, subsequent		Issuing for goods not received	28-2101
charges	28-1924	No title to goods, negotiation of re-	
Other remedies not precluded	28-1926	ceipts	28-2106
Refusal to deliver goods, loss of lien	28-1923	Warehouseman owner or part owner of	
Remedies for enforcing lien	28-1929	goods, failure to disclose	28-2104
Right to hold goods until lien satisfied	28-1925	Perishable goods, sale by warehouseman	28-1928
Sale of goods to satisfy lien	28-1927—28-1930	Permitting provisions	28-1803
Surrendering possession of goods, lien lost		"Person" defined	28-2203
	28-1923	Prohibited terms and conditions	28-1803
Third person satisfying	28-1927	"Purchase" defined	28-2203
Lost or destroyed receipts	28-1907	"Purchaser" defined	28-2203
Bond to protect warehouseman	28-1907	"Receipt" defined	28-2203
Delivery of goods under order of court	28-1907	Required provisions	28-1802
Liability of warehouseman, goods delivered		Sale of goods by owner, retention of receipts	28-2012
	28-1907	Subsequent negotiation, effect	28-2012
Proof of loss, delivery of goods	28-1907	Sale of goods to satisfy lien	28-1927
Mortgaging or pledging goods, negotiation of		Advertisement of sale	28-1927
receipt, effect	28-2012	Disposition made of proceeds	28-1927
Negotiable receipts	28-1805	Effect of sale on liability of warehouse-	
Cancelation, goods delivered	28-1904	man	28-1930
Definitions	28-1805	Hazardous goods	28-1928
Indorsement in blank or to bearer		Method of conducting sales	28-1927
	28-2001, 28-2002	Notice given, contents	28-1927
Insertion of nonnegotiable provision in ne-		Perishable goods	28-1928
gotiable receipts, effect	28-1805	Third person satisfying lien	28-1927
Methods of indorsing	28-2002	Stolen receipts, negotiation, effect	28-2011
Negotiation by delivery	28-2001	Stoppage in transitu, effect on right, receipts	
Negotiation by indorsement	28-2001	negotiated	28-2013
Partial delivery of goods	28-1905	Transfer of receipts	28-2003
Persons empowered to negotiate	28-2004	Receipts not negotiable by delivery	28-2003
Power to compel indorsement after trans-		Uniform act	28-1802—28-1917, 28-1919—28-2205
fer	28-2006	"Value" defined	28-2203
Successive negotiations	28-2002	Vendor's lien defeated by negotiation	28-2013
Negotiation through mistake, effect	28-2011	Warehouseman authorized to issue	28-1801
Nonexistence or misdescription of goods	28-1913	"Warehouseman" defined	28-2203
Goods described by mark or label	28-1913	Warehouseman's right to claim title	28-1909
Liability of warehouseman	28-1913	Transfer by depositor required	28-1909
Statements of depositor used to describe		Warranties on negotiation or transfer	
goods	28-1913		28-2008—28-2010
Nonnegotiable receipts	28-1804	Holder for security accepting payment, no	
Can not be negotiated	28-2003	implied warranty	28-2810
Definitions	28-1804	Indorser not guarantor	28-2809
Duty to mark as nonnegotiable	28-1807	Mortgagee accepting payment, no war-	
Indorsement, no additional rights trans-		ranty implied	28-2810
ferred	28-2003	Pledgee accepting payment, no warranty	
Letters or memoranda excluded	28-1807	implied	28-2810
Liability of warehouseman for failure to		WARRANTIES	
mark	28-1807	Duplicate warehouse receipts	28-1908
Transfer	28-2003	General indorsers	28-507
No particular form required	28-1802	Negotiation of negotiable instruments by de-	
Omission of required provisions, liability	28-1802	livery	28-507
"Order" defined	28-2203	Qualified indorsers	28-506



<b>WARRANTIES—Continued</b>		<b>Sec.</b>	<b>WASHINGTON POST-OFFICE</b>	<b>Sec.</b>
"That he will warrant generally the property hereby conveyed," effect in deeds	45-304		Custody and control	9-105 note
"That he will warrant specially the property hereby conveyed," effect in deeds	45-305		<b>WASHINGTON'S MANUAL LABOR SCHOOL</b>	
Under uniform sales act	28-1111—28-1116		Deed of transfer to Columbia Institution for the Deaf	31-1003
Warehouse receipts, negotiation or transfer	28-2008—28-2010		<b>WASHINGTON STOCK EXCHANGE</b>	
Warranty by life tenant void as to heir	45-309		Taxation	47-1707
"With general warranty," effect in deeds	45-304		<b>WASHINGTON SUBURBAN SANITARY DISTRICT</b>	
"With special warranty" effect in deeds	45-305		Contract for District water diversion	43-1530
<b>WARRANTS FOR ARREST</b>			<b>WASHINGTON TERMINAL COMPANY</b>	
Execution by police	4-138		Assessment of real property	47-718, 47-719
Municipal Court judges	11-705		Establishment and maintenance of terminal station authorized	7-1212
Police making without warrant, circumstances authorizing	4-140		Street lights, payment for, maximum charges	7-708
			Enforcing payment	7-708
			Union Station, operation	7-1213
<b>WASHINGTON</b>			<b>WATCHES</b>	
District of Columbia successor to corporations of Washington	1-104		Auctioneers, Police Department, supervisory powers	4-147, 4-148, 4-150
General laws and ordinances made applicable to Georgetown	1-107		<b>WATER</b>	
Georgetown made part of	1-107		See WATER-MAINS; WATER-WORKS	
"Limits of city" defined	1-107		Making impure maliciously, penalty	22-3118
Records and other documents made property of District	1-106		Meters, tampering with, penalty	22-3117
			Pipes, tapping penalty	22-3117
<b>WASHINGTON AQUEDUCT</b>			<b>WATER-CRAFT</b>	
Use in part as playground	8-130		Jury service, exemption of officers and crew	11-1420
<b>WASHINGTON ASYLUM AND JAIL</b>			Tugboats, operating on Potomac River, regulations	7-509
See PRISONS AND PRISONERS			United States owning and operating, exemption from Boiler Inspection Act	1-709
Superintendent, salary to be included in budget estimates	47-201		<b>WATER DEPARTMENT</b>	
<b>WASHINGTON ASYLUM HOSPITAL</b>			See PUBLIC UTILITIES	
See HOSPITALS AND ASYLUMS			Chief of Engineers shutting off water to prevent waste	43-1507
<b>WASHINGTON GAS LIGHT COMPANY</b>			Chief of Engineers to report unlawful tapping of water pipes to District Attorney	43-1535
Taking up, laying, or replacing gas main before paving of street	7-605		Damage or defacement of water pipes, penalty	43-1536
<b>WASHINGTON HUMANE SOCIETY</b>			Diversion of water beyond District	43-1529—43-1531
Alteration, amendment, and repeal, reservation of Congress	32-211		Acquisition of land and right-of-way for pipe lines to Virginia	43-1532
Bringing abused children before Juvenile Court	32-209		Contracts with Arlington County Sanitary District for diverting to Virginia	43-1531
By-laws	32-204		Contracts with Washington Suburban Sanitary District for diverting to Maryland	43-1530
Cooperation of Commissioners of District	32-209		Prohibition, exceptions	43-1529
Cruelty to animals, police to arrest for at request of member	32-205		Erection of water-mains and service sewers	43-1510
Division of fines within	32-206		Expenses to be included in budget estimates	47-210
Evidence of membership	32-205		Fire-plugs and hydrants, power of District Commissioners to erect	43-1501
Income tax exemption	47-1502		Fire-plug tax	43-1525—43-1528
Incorporation	32-201		Levy on buildings without water service	43-1525
Law effective throughout District	32-207		Levy on discontinuance of water service	43-1528
Laws affecting children	32-209		Rates	43-1526
Officers	32-202		To cease on introduction of water	43-1527
Police to aid	32-209		Fiscal year	43-1504
Police to be detailed to aid in preventing cruelty to animals	32-210		Large quantity users to erect and maintain meters	43-1509
Preventing cruelty to animals	32-205			
Preventing cruelty to children	32-208			
<b>WASHINGTON NATIONAL AIRPORT</b>				
See AIRPORT				



WATER DEPARTMENT—Continued		Sec.	WATER-MAINS—Continued		Sec.
Prevention of water waste		43-1507	Construction, assessment of cost against abutting property	43-1510—43-1515	43-1515
Disregard of notice, effect		43-1507	Damaging or defacing water pipes, penalty		43-1536
Notice of waste		43-1507	Laying in street before improvement		7-605
"Service sewer" defined		43-1517	Meters, tampering with, penalty		22-3117
Service sewers, erection		43-1510	Permit system of public improvement		7-608
Assessment collections to be credited to appropriations		43-1516	Street improvements, service connections, assessment of cost		7-610
Assessment of abutting property	43-1510, 43-1511		Streets dedicated by landowners, right to lay in parking		7-117
Assessment of land not subdivided	43-1514		Tapping, penalty		22-3117
Assessments payable in three installments	43-1513		Water, making impure maliciously, penalty		22-3118
Discretion of Commissioners of District	43-1510		WATER-POWER COMPANY		
Notice of assessments	43-1512		Definition		43-116
Relevy of assessments	43-1515		WATER REGISTRAR		
Subject to control of Commissioners of District	43-1502		Bond		43-1506
Supplying water to charitable institutions and churches	43-1533		WATER STREET		
Unauthorized opening of water-mains and pipes, penalty	43-1538		Closing in part for park purposes		8-114
Under direction of engineer's office	43-1502		Consent of three-fourths of property-owners		8-114
Unlawful tapping of water pipes, penalty	43-1534		WATER-WORKS		
Use of Potomac water for private mechanical and manufacturing purposes or fountains	43-1508		Fees for connecting with water system		1-726
Water-mains and pipes, power of District Commissioners to lay	43-1501		Meters, tampering with, penalty		22-3117
Water-mains, erection	43-1510		Water, making impure maliciously, penalty		22-3118
Assessment collections to be credited to appropriations	43-1516		WEAPONS		
Assessment of abutting property	43-1510, 43-1511		Altering identification marks		22-3212
Assessment of land not subdivided	43-1514		Antique and toy pistols excepted		22-3213
Assessments payable in three installments	43-1513		Carrying concealed pistols	22-3204—22-3206	22-3206
Discretion of Commissioners of District	43-1510		Exceptions		22-3205
District to pay for all but those supplying government property	43-1537		In dwelling-house or place of business		22-3204
Notice of assessments	43-1512		Licenses to carry, issuance		22-3206
Refund of overpaid assessment	43-1518		Constitutionality, saving clause		22-3216
Relevy of assessments	43-1515		Crimes of violence, committing while armed		22-3202
Water-main taxes to be uniform	43-1505		Deadly or dangerous weapons, dealer's license, fee		47-2340
Water registrar	43-1506		Dealers to be licensed		22-3209
Bond	43-1506		Definitions		22-3201
Duties	43-1506		Crime of violence		22-3201
Water rents			Machine gun		22-3201
Authority to collect in advance	43-1521		Person		22-3201
Authority to stop service on failure to pay	43-1521		Pistol		22-3201
Constitute fund for maintenance, management and repair of water supply system	43-1522, 43-1523		Purchase		22-3201
From Washington aqueduct to be applied to its improvement	43-1524		Sawed-off shotgun		22-3201
Must be uniform	43-1505		Sell		22-3201
Not to be source of revenue	43-1522		Discharge of firearms in Capitol grounds prohibited		9-110
Rates	43-1520		False information in sales prohibited		22-3211
Refund when erroneously paid	43-1519		Federal firearms act, application to District		p. 680 note
Water supply, rules and regulations	43-1503		Firearms		
WATER-MAINS			Dealer's license, fee		47-2340
See ASSESSMENT; ASSESSOR; WATER DEPARTMENT			Major and superintendent of police		47-2340
Building and lot connections	6-401—6-404		Approval of license		47-2340
			Report of sales to		47-2340
			Licensing dealers		22-3210
			Penalties for violating provisions		22-3215
			Possession of certain dangerous weapons, exceptions		22-3214
			Possession of pistol by criminals		22-3203
			Regulations relative to, power to adopt		1-227
			Selling pistols to minors and others		22-3207
			Transfers of fire arms, regulations		22-3208



WEEDS		Sec.	WEIGHTS, MEASURES, AND MARKETS—		Sec.
Cutting at public expense		6-902	Continued		
Cost taxed against property, interest		6-902	Department of Weights, Measures, and Mar-		
Owner, occupant, or agent unknown		6-902	kets		10-101—10-103
Publication of notice		6-902	Appointment by Commissioners		10-101
Unoccupied land		6-902	Assistants, inspectors and other em-		
Duty to cut		6-901	ployees, power to appoint		10-101
Failure to cut after notice, penalty		6-901	Superintendent		10-101—10-103
Notice to cut	6-901, 6-902		Duty of owner to have scales and measuring		
Prosecution for failure to cut		6-903	devices tested		10-103
WEIGHING MACHINES			Enforcing officer, powers		10-126
License	47-2319		False weighing or measuring devices pro-		
WEIGHTS, MEASURES, AND MARKETS			hibited		10-107
Alteration of weighing or measuring devices,			Farmers' produce market, preservation for use		
inspection and approval	10-104		of farmers		10-137 note
Apples, standard box, dimension	10-115		Fish sold by avoirdupois weight		10-120
Approval and sealing of weight and measure	10-103		Fish wharf and market		10-135
Automatic measuring pump	10-122		Location		10-135
"Out of use" sign on pump, when required	10-122		Regulation and control by Commission-		
Subject to inspection and approval, or			ers of District		10-135
condemnation	10-122		Wharfage and dockage fees		10-135
Automatic vending devices, regulations con-			Fluid ounce, dimension		10-119
cerning use	10-109		Food in package form		10-117
Beets, sale by bunch authorized	10-115		Tolerances and exemptions, commission-		
Berries, standard container	10-115		ers' power to establish		10-117
Boxes for small fruits and vegetables, stand-			Weight, measure or numerical count indi-		
ard container	10-115		cated on package		10-117
Bread, regulations concerning weight and			Frequency with which weights and measures		
sale	10-113		tested		10-103
Bushel box, dimension	10-115		Frozen products, standard container		10-119
Center market	10-137 note		Gill, dimension		10-119
Cherries, standard container	10-115		Grape baskets, standard sizes		10-115
Climax baskets	10-114		Hampers for fruits and vegetables, dimension		10-115
Four-quart baskets, dimensions	10-115		Heavy weighing scale or over sized measures,		
Twelve-quart baskets, dimensions	10-115		use by buyer prohibited		10-107
Two-quart baskets, dimensions	10-115		Ice cream, standard container		10-119
Coal	10-108, 10-111		Ice, sale, regulation		10-112
Delivery ticket, content	10-111		Sale by weight required		10-112
Delivery vehicle, name of seller of fuel			Scales, regulations concerning		10-112
displayed	10-111		Weight ascertained at time of delivery		10-112
Original of delivery ticket, right of super-			Inspector, hindering in making inspections		
intendent or inspector to demand	10-111		prohibited		10-105
Sale by weight required	10-111		Kale, sale at retail by weight		10-115
Sale, long ton used	10-108		Liquid gallon, dimensions		10-119
Sales of less than one ton	10-111		Liquid half-pint, dimension		10-119
Superintendent's power to require weigh-			Liquid pint, dimension		10-119
ing while on way for delivery	10-111		Liquid quart, dimensions		10-119
Wetting before weighing prohibited	10-111		Lug boxes, standard dimensions		10-115
Coin in slot machine, regulations concerning	10-109		Market stands, license fee		47-2327
"Commissioners" defined as meaning "Com-			Milk and cream, bottle or other container, reg-		
missioners of District of Columbia"	10-131		ulations and requirements		10-113
Condemnation of nonconforming devices	10-103		Net weight used in selling commodity		10-108
Constitutionality of regulatory acts, provi-			One bushel hamper, dimensions		10-115
sion separable	10-133		One-half bushel box, dimension		10-115
Corn	10-121		One-half bushel hamper, dimensions		10-115
Corn on cob, weight of barrel	10-121		One-half pint, dimensions		10-115
Shelled corn, weight of barrel	10-121		One-peck hamper, dimensions		10-115
Crates for fruits and vegetables	10-115		Onion crates, dimensions		10-115
Four-basket flat crate, capacity	10-115		Onions, sale by bunch authorized		10-115
Six-basket carrier crate	10-115		Oysters		10-120
			Sale by numerical count authorized		10-120
			Shucked oysters sold by liquid measure		10-120
			Pears, standard box, dimensions		10-115
			Penalties for violating law		10-134



WEIGHTS, MEASURES, AND MARKETS—	Sec.
Continued	
"Person" construed to mean "partnership," "corporation," or "association"	10-132
Pint measure, dimension	10-115
Private residences, freedom from entry for purpose of making inspection of weights and measures	10-126
Proration of price with reference to quantity sold	10-123
Prosecution of violations of law by corporation counsel	10-134
Provisions of regulatory law deemed separable	10-133
Public scale, licensing and locating	10-128
Quart measure, dimension	10-115
Repair of weighing and measuring devices, inspection and approval	10-104
Rhubarb sale by bunch authorized	10-115
Right of entry of superintendent and inspectors	10-126
Round-stave basket for fruits and vegetables, sizes and dimensions	10-115
Sale ticket duty to furnish on request	10-110
Searches and seizure of nonconforming weighing and measuring devices	10-103
Shelled beans, standard container	10-115
Shelled peas, standard container	10-115
Sherbets, standard container	10-119
Short weight or count by seller prohibited	10-115
Short weight or measure by seller prohibited	10-107
"Singular" construed to include "plural"	10-132
Slot machine, regulations concerning use	10-109
Specifications for weights and measures, power of Commissioners to establish	10-127
Spinach, sale at retail by weight	10-115
Standard barrel	10-115
Cranberries	10-115
Dimensions and capacity	10-115
Fruit, vegetables, and other dry commodities	10-115
Standard container, use required	10-115
Superintendent of markets, "superintendent" defined	10-131
Superintendent of weights, measures, and markets	10-101—10-103
Amounts of commodities kept or offered for sale, right to inspect, weigh or measure	10-124
Appointment by Commissioners	10-101
Arrest, power to make	10-126
Bond, amount	10-102
Commodities in process of delivery, weighing and inspecting	10-124
Custody and control of standards	10-101
Enforcement of regulation regarding operation of market	10-130
Fees payable into Treasury	47-126
Investigations concerning sale, distribution, or prices of commodity, report	10-130
Oath	10-102
Packages, right to inspect, weigh, or measure	10-124
Police power of superintendent and assistant	10-126

WEIGHTS, MEASURES, AND MARKETS—	Sec.
Continued	
Superintendent of weights, measures, and markets—Continued	
Powers and duties granted to and imposed on assistant and inspector	10-129
Powers in general	10-103
Record of inspection	10-106
Sale or interest in sale of weighing or measuring devices prohibited	10-125
Supervision over produce and other market owned by District	10-130
Testing of weighing and measuring devices and equipment	10-103
"Term" defined	10-108
Tolerances, Commissioners' power to establish	10-127
Turnips, sale by bunch authorized	10-115
Unapproved scales or measuring devices, possession prohibited	10-103
Use of other than standard containers prohibited	10-116
Weighmaster	10-128
Appointment by Commissioners	10-128
Fees, determination by Commissioner	10-128
Wholesale producers' market	10-136
Charges for use of space, maximum	10-136
Disposition made of receipt	10-136
Wood for fuel	10-118
Cord of wood, dimension	10-118
Sale by standard load authorized	10-118
Wood more than eight inches in length	10-118
WELFARE AND RECREATIONAL ASSOCIATION	
Bathing pools and beaches, operation	8-171
WELLS	
Uncovered and dangerous, abatement as nuisance	5-504
WHARF PROPERTY	
Basins, docks, and water-fronts included	9-101
Control by Commissioners of District	9-101
Lease, maximum duration	9-102
Piers, bulkheads, and structures included	9-101
Potomac River bank, control in part by Chief Engineer of Army	9-101
Rentals paid into Federal Treasury, apportionment between District and United States	9-102
Repair and maintenance	9-101
Rules and regulations for control and management	9-101, 9-102
WHARVES	
Strangers and travelers, protection by Commissioners	4-119
WHISKY	
Definition of "spirits" includes	25-103
WHITEHAVEN PARKWAY	
Boundaries, readjustment	8-117
Closing of highways and alleys in parcel "A"	8-117
Dedication of land	8-119, 8-120
Exchange of land with property owners	8-119
Plats, preparation, approval, and recordation	8-120
Use of land in parcel "B" for streets and alley purposes	8-118



<b>WHITE HOUSE</b>	Sec.
Buildings fronting, grounds, plans, approval by Commission of Fine Arts	5-410
<b>WHITE HOUSE POLICE</b>	
Age retirement allowance, conditions	4-507
Appointment from Metropolitan police force and park police force	4-302
Captain	4-302
Chief of Secret Service Division, supervising officer	4-301
Creation	4-301
Death benefits payable to widow and children, conditions	4-507
Death while in service, repayment of contributions to relief fund	4-504
Funeral expenses, amount contributed from relief fund	4-509
Lieutenants	4-302
Participation in police and firemen's relief fund	4-304
Percentage of contribution from basic salary	4-304
Retirement, credit for service on Metropolitan or park police force	4-304
Personnel, appointment, vacancies	4-302
Powers, duties, and privileges	4-301
Privates, appointment, number	4-302
Protection of Executive Mansion and grounds	4-301
Reappointment, redeposit of refund in relief fund	4-504
Refund from relief fund on separation from force	4-504
Refund of payments to retirement fund	4-305
Relief fund, salary deductions, refunds	4-503, 4-504
Retiring and relief board, powers and duties, report of findings	4-510, 4-511
Salaries	4-303
Sergeants	4-302
Temporary disability allowance	4-506
Total disability allowance, conditions	4-507
Transfer to Metropolitan or park police	4-303
Transfer to park police force	4-305
Percentage of payment from basic salary into retirement fund	4-305
Refund of salary deductions	4-305
Reinstatement, payment of refund into retirement fund	4-305
Uniforms	4-303
Vacancies, method of filling	4-302
Voluntary retirement, payment of benefits, conditions	4-508
<b>WHITE SLAVERY</b>	
See PANDERING	
Compelling female to live life of prostitute, penalty	22-2705
Detaining female prostitute for debt	22-2709
Federal law applicable to District, reference	p. 680
Guardian consenting to prostitution of ward, penalty	22-2705
Inducing or compelling female to become prostitute	22-2705
Parent consenting to prostitution of female child, penalty	22-2705

<b>WHITE SLAVERY—Continued</b>	Sec.
Procuring females for third persons, penalty	22-2711
Procuring for house of ill-fame, penalty	22-2710
<b>WHOLESALE PRODUCERS' MARKET</b>	
Location, charges for space	10-136
<b>WIDTH</b>	
Minor street	7-301
<b>WILLIAMSBURG LANE</b>	
Twenty-fourth Street Northwest, name changed	7-107 note
<b>WILLS</b>	
See DECEDENTS' ESTATES; EXECUTORS AND ADMINISTRATORS; REGISTER OF WILLS	
Administration	20-101
Admission to probate	11-503
Advancement as satisfaction of legacy	19-109
Alteration	19-103
Attestation by creditor valid	19-106
Bequests to institutions of learning	29-406
Capacity to make	19-101
Contingent estates conveyable by will	45-101
Criminal offenses	22-1403
Destroying	22-1403
Mutilating	22-1403
Secreting	22-1403
Stealing	22-1403
Withholding	22-1403
Description of property by reference to subdivision	7-110
Devises in general	19-201
After-acquired realty	19-205
General devise of all property	19-203
Land includes leaseholds	19-204
Property subject to being devised	19-201
Religious purposes	19-202
Devises to attesting witnesses	19-104
Declared void	19-104
Property not to be demanded or retained	19-105
Devises to charitable uses, rules against perpetuities inapplicable	45-102
Devises to institutions of learning	29-406
"Die without issue," meaning	45-205
"Die without leaving issue," meaning	45-205
Execution of power by will	19-107
Fee simple estate	
Created unless contrary intention appears	45-201
Words of inheritance unnecessary to create	45-201
Foreign wills as evidence	14-402
Form	19-103
Future estate	
Conveyable by will	45-101
Dependent on person's death without heirs, issue or children defeated by birth of his posthumous children	45-204
Limited to heirs, issue or children, posthumous children take as though living at ancestor's death	45-204
"Have no issue," meaning	45-205
Jurisdiction of Probate Court	11-503
Lapsed or void devises	19-110
Life estates conveyable by will under seal	45-106



WILLS—Continued		Sec.	WITNESSES—Continued		Sec.
Limitation of actions		12-207	Competency		14-301—14-309
Nuncupative wills invalid, exception		19-102	Assessor in condemnation proceedings		14-309
Opening, reading before delivery to Probate Court		19-111	Husband and wife		14-306
Power to dispose by devise must be executed by will		45-1018	Confidential communications		14-307
Power to dispose by grant can not be executed by will		45-1018	Not compellable witnesses		14-306
Present estates conveyable by will		45-101	Interested persons		14-301
Probate		19-301	Partners of deceased parties		14-304
Caveat		19-307	Party to cause		14-301
Admission of prior will barred		19-310	Death of other party		14-302
Time for filing		19-309	Decease after testifying, effect		14-303
Will not to be probated while pending		19-307	Incapability of other party		14-302
Citation, publication		19-301	Incapacity after testifying, effect		14-303
Decree for admission		19-308	Physicians		14-308
Guardians ad litem		19-303	Witness convicted of crime		14-304
Petition for probate		19-301	Admitting conviction in evidence		14-305
Plenary proceedings		19-311	Competent		14-304
Proof of execution can not be waived		19-304	Proving conviction		14-305
Proof of will		19-305	Coroner's inquests		11-1205
Production of witnesses		19-305	Criminal proceedings, detention		4-144
Register of wills taking testimony		19-306	Place of detention		4-144
Witnesses outside District		19-306	Unable to furnish security for appearance		4-144
Trial of issues		19-312	Depositions		
Judgment		19-312	Aged or infirm witness		14-201
Jury		19-312	Fee for, effect of tender		14-202
Notice		19-312	Summoning witness		14-201
Waiver of notice		19-304	Used only when witness is unavailable		14-201
Who may appear		19-302	Witness in foreign country		14-201
Wills filed prior to June 8, 1898		19-313	Witness likely to leave District		14-201
Remainder to heirs of life tenant does not give him fee simple estate		45-203	Witness unable to attend during trial		14-201
Revival after revocation		19-108	Failure to obey subpoenas of superintendent of insurance		35-412
Revocation		19-103	Fees		
Rule in Shelley's case abolished		45-203	Before public utilities commission		43-419
Vested estates conveyable by will		45-101	Board of assistant assessors		47-606
Witnesses		19-103	Board of equalization and review		47-606
Words of inheritance unnecessary to create fee simple estate		45-201	Police Court		11-615
			Police Court, in cruelty cases		11-603
			Unemployment compensation hearings		46-311
			Fees and costs		11-1512
			Immunity in prosecutions under fire and casualty act		35-1346
			Immunity in prosecutions under life insurance act		35-802
			Immunity in unemployment compensation hearings		46-311
			Impeachment of own witness		14-104
			Investigation of municipal matters by Commissioners, oaths, powers to administer		1-237
			Municipal Court, compelling attendance		11-740
			Plats prepared for private owners		1-618
			Building plat surveyed		1-620
			Probate Court, refusal to give evidence, penalty		11-506
			Trial boards of Police and Fire Departments		4-601—4-603
			Unable to attend during trial, deposition		14-201
			Wills		19-103
			WOMEN		
			See MARRIED WOMEN		
			Bequests to female		18-722
			Employment		36-301—36-311
			Forty-eight hour law		36-301
			Hours of continuous labor restricted		36-303
			Hours of, females under 18		36-302

WILLS—Continued		Sec.
Limitation of actions		12-207
Nuncupative wills invalid, exception		19-102
Opening, reading before delivery to Probate Court		19-111
Power to dispose by devise must be executed by will		45-1018
Power to dispose by grant can not be executed by will		45-1018
Present estates conveyable by will		45-101
Probate		19-301
Caveat		19-307
Admission of prior will barred		19-310
Time for filing		19-309
Will not to be probated while pending		19-307
Citation, publication		19-301
Decree for admission		19-308
Guardians ad litem		19-303
Petition for probate		19-301
Plenary proceedings		19-311
Proof of execution can not be waived		19-304
Proof of will		19-305
Production of witnesses		19-305
Register of wills taking testimony		19-306
Witnesses outside District		19-306
Trial of issues		19-312
Judgment		19-312
Jury		19-312
Notice		19-312
Waiver of notice		19-304
Who may appear		19-302
Wills filed prior to June 8, 1898		19-313
Remainder to heirs of life tenant does not give him fee simple estate		45-203
Revival after revocation		19-108
Revocation		19-103
Rule in Shelley's case abolished		45-203
Vested estates conveyable by will		45-101
Witnesses		19-103
Words of inheritance unnecessary to create fee simple estate		45-201

WINDOWS	
Fireproofing, when required	5-305

WINE	
See ALCOHOLIC BEVERAGES	
Definition	25-103

WIRING	
See ELECTRICAL WIRING	

WISCONSIN AVENUE	
Widening, use of land owned by United States authorized	7-126

WITNESSES	
Attendance before public utilities commission compellable	43-405
Attesting witnesses, devises to void	19-104
Before courts-martial of National Guard	36-707
Board of Dental Examiners, power to call and examine witnesses	2-304
Board of Pharmacy hearings	2-606
Board of Podiatry Examiners hearing	2-703



<b>WOMEN—Continued</b>	<b>Sec.</b>	<b>WRONGFUL DEATH</b>	<b>Sec.</b>
<b>Employment—Continued</b>		See NEGLIGENCE CAUSING DEATH	
Inspectors,		Damages	16-1201
Appointment by Commissioner	36-306	<b>W STREET NORTHEAST</b>	
Enforcement of law	36-308	Abandonment in part authorized	7-123 note
Entering buildings authorized	36-307	<b>X-RAYS</b>	
Reports	36-308	Radiographic laboratory, exception from den-	
Penalties	36-309	tistry regulatory law	2-315
Regulations to be posted by employer	36-304	Technicians, exemption from Healing Arts	
Seats		Practice Act	2-134
Employer to provide	36-310	<b>YOUNG MEN'S CHRISTIAN ASSOCIATION</b>	
Penalty for failure to provide	36-311	Property exempted from taxation	47-817
Time book to be kept	36-305	<b>YOUNG WOMAN'S CHRISTIAN HOME</b>	
<b>WOOD</b>		Property exempted from taxation	47-814
Fuel wood	10-118	<b>YOUNG WOMEN'S CHRISTIAN ASSOCIATION</b>	
Cord of wood, dimension	10-118	Property exempted from taxation	47-815
Standard load authorized	10-118	Relieved from accrued tax liability	47-816
Wood more than eight inches in length	10-118	<b>ZINC</b>	
<b>WORDS</b>		Poisonous compounds, sale, restrictions	2-612
Control over figures, negotiable instruments	28-118	<b>ZONING REGULATIONS</b>	
<b>WORDS AND PHRASES</b>		Administrative officer or body, term con-	
See DEFINITIONS		strued	5-425
<b>WORKHOUSE</b>		Advisory Council	5-417
See PRISONS AND PRISONERS		Failure to submit opinion on amendment,	
Working capital for industrial enterprises	47-131	right to proceed	5-417
<b>WORKMEN'S COMPENSATION</b>		Qualification	5-417
See UNEMPLOYMENT COMPENSATION		Amendment by Board of Zoning Adjustment	
Benefits exempted from income tax	47-1504	prohibited	5-420
Common carrier employers' liability act	44-401—	Amendment of existing regulations	5-415, 5-416
	44-405	Adjournment of hearing from time to time	5-415
Employees excepted	36-502	Contents of notice	5-415
Law applicable generally	36-501, 36-502	Majority vote of commission members	
Longshoremen's and Harbor Workers Com-		required	5-416
pensation Act made applicable with varia-		Notice of hearing	5-415
tions	36-501, 36-502	Public hearing required	5-415
		Right to be heard	5-415
<b>WORK OR VACATION PERMITS</b>		Submission to Advisory Council	5-417
See CHILD LABOR		Appeals to Board of Adjustment	5-420
<b>WORKS OF ART</b>		Decision or order of administrative officer	
Antique pistols	22-3213	of body	5-420
Stealing or injuring, penalty	22-3106	Fee for appeal, organizations excepted	
<b>WRITING</b>		from payment	5-420
Contracts, statute of frauds	12-302	Fee for appeal, right to fix	5-420
<b>WRITS</b>		Grounds for appeal	5-420
See EXECUTIONS; HABEAS CORPUS; MANDAMUS		Parties entitled to appeal	5-420
Court of Appeals, power to issue	11-208	Powers of Board	5-420
Error, writ of, amendment	13-312	Request for exceptions from regulations	5-420
Habeas corpus, persons entitled to apply for		Right to provide for appeals to zoning	
writ	16-801, 16-808	commission	5-420
Juvenile Court, power to issue	11-930	Board of Zoning Adjustment	5-420
United States District Court, power to issue	11-315	Amendment of regulations or maps pro-	
<b>WRITTEN</b>		hibited	5-420
Definition, negotiable instruments law	28-101	Appeals to Board	5-420
<b>WRITTEN WORDS</b>		Appointment	5-420
Control over credit provisions, negotiable in-		Boundary line, power to pass upon	5-420
struments	28-118	Exception to regulation, power to provide	5-420
		Interpretation of zoning maps	5-420
		Majority vote of members required	5-420
		Meetings open to public	5-420
		National Capitol Park and Planning Com-	
		mission represented	5-420



ZONING REGULATIONS—Continued		ZONING REGULATIONS—Continued	
	Sec.		Sec.
Board of Zoning Adjustment—Continued		Fees for permits, certificates and transcripts	5-429
Number of members	5-420	Collection by Building Inspector	5-429
Qualifications of members	5-420	Display of schedule in office of Building Inspector	5-429
Record of meetings	5-420	Fixed by Commissioner	5-429
Rules governing organization and procedure, power to adopt	5-420	Height of building	5-405, 5-413
Salaries of members	5-426	Governed by width and character of street	5-405
Selection of chairman and officers	5-420	Power to regulate	5-413
Term of office	5-420	Lessening of congestion	5-413, 5-414
Vacancies filled for unexpired term	5-420	Maps filed in office of Engineer Commissioner	5-421
Zoning commission represented	5-420	Municipal regulation	5-423, 5-424
Building permit, restrictions on issuance	5-422	Establishing higher standards, control over zoning regulations	5-424
Building regulations, "amend," "amendment," or "amended," terms construed	5-425	Power of Commissioners to adopt	5-423
Bulk and size of buildings, power to regulate	5-413	Number of stories, power to regulate	5-413
Business streets, power of Commissioners to designate	7-1205	Percentage of lot which may be occupied, regulation	5-413
Character of District considered in establishing	5-414	Promotion of proper distribution of population	5-414
Commission created	5-412	Publication of regulation or amendment thereof	5-421
Employees of District assigned to commission, serve without additional compensation	5-412	Purpose in establishing	5-413, 5-414
Members of commission	5-412	Repeal of prior law	5-427
Members serve without additional compensation	5-412	Size of yards, courts and other open spaces, regulation	5-413
Powers and duties	5-413	Statute establishing higher standard, control over regulations	5-424
Purpose	5-412	Uniformity	5-413
Construction of buildings in violation of regulations, penalty	5-422	Classes and kinds of buildings throughout each District	5-413
Definition of terms used	5-425	Different District, difference in regulations	5-413
Division of District into zones	5-413	Use of buildings	5-413
Effect as to future construction	5-424	Zoning Advisory Council, member, method of selecting	5-417
Higher standards established, control over municipal regulations and statutes	5-424	Zoning commission	
Enforcement by Commissioners of District	5-423	Appropriation, budget estimate	5-426
Existing building not conforming to regulation	5-419	Designation of member of Advisory Council	5-417
Continued use	5-419	Employment of personnel	5-426
Extension of nonconforming use, discretion of commission	5-419	Representation on Board of Zoning Adjustment	5-420
Structural alteration or enlargement, restriction	5-419	Right to provide for appeals from Board of Adjustment	5-420
Existing regulation, continuance and effect	5-415	Salaries fixed by Classification Act	5-426
Federal public buildings	5-428		
Approval of plans by National Capital Park and Planning Commission	5-428	ZOOLOGICAL PARK	
Exception from act	5-428	See NATIONAL ZOOLOGICAL PARK	















